

Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TIMAERO IRELAND LIMITED,

Plaintiff,

v.

THE BOEING COMPANY,

Defendant.

No. 2:21-00488-RSM

THIRD AMENDED COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff Timaero Ireland Limited (“Timaero”), by and through its attorneys,  
2 Whitmyer IP Group LLC, for its Third Amended Complaint against Defendant The Boeing  
3 Company (“Boeing” or “Defendant”), alleges as follows:

#### 4 I. THE PARTIES

5  
6 1. Plaintiff Timaero is an Irish private company with a principal place of  
7 business at 3 Dublin Landings, North Wall Quay, Dublin 1, DUBLIN, Ireland.<sup>1</sup> Timaero is  
8 a financial organization in the business of purchasing aircraft and leasing/selling them for  
9 profit. Timaero engages in leasing, sub-leasing, sale, and purchase of air transport vehicles.

10 2. Defendant The Boeing Company is a Delaware corporation that has a  
11 principal place of business and corporate headquarters located at 100 North Riverside,  
12 Chicago, Illinois 60606. Boeing is in the business of, *inter alia*, designing, manufacturing,  
13 integrating, assembling, modifying, maintaining, inspecting, testing, servicing, marketing,  
14 distributing, and selling aircraft, including the 737 MAX aircraft that is the subject of this  
15 lawsuit. The Boeing Company employs over 50,000 people in the state of Washington.

16 3. Defendant The Boeing Company owns and controls the unincorporated  
17 division, Boeing Commercial Airplanes (“BCA”) which maintains a corporate headquarters  
18 in Renton, Washington. BCA, on behalf of The Boeing Company, is responsible for *inter*  
19 *alia*, designing, manufacturing, integrating, assembling, modifying, maintaining,  
20 inspecting, testing, servicing, marketing, distributing, and selling aircraft, including the 737  
21 MAX aircraft that is the subject of this lawsuit.  
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<sup>1</sup> Timaero’s address is current as of the filing date.

## II. JURISDICTION AND VENUE

4. Subject matter jurisdiction exists by virtue of 28 U.S.C. § 1332, diversity jurisdiction, in that this is an action between a citizen of a state and a citizen of a foreign state, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over Boeing. Boeing transacts business and manufactures the 737 MAX aircraft in King County, Washington, including in Renton, Washington. At all relevant times, Boeing has been authorized to do business, and has been transacting or conducting business, in the State of Washington. Boeing designed, engineered, sought regulatory certification, marketed, sold, assembled, and delivered the 737 MAX aircraft at issue in this case in the State of Washington, particularly in Renton, Washington and the Western District of Washington.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Boeing resides in the Western District of Washington and a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated in, the Western District of Washington. Boeing transacts business in and the 737 MAX is designed, assembled, and sold in King County, including in Renton, Washington. The 737 MAX program, encompassing approximately 10,000 employees, has at all times been located in Renton, Washington. Timaeo took delivery of its 737 MAX aircraft at Boeing's delivery center in Seattle, Washington.

7. The Purchase Agreement is an adhesion contract drafted by Boeing, and Timaeo was never provided a meaningful opportunity to negotiate better contractual

1 protections against Boeing's fault or negligence. The Purchase Agreement provides that it  
 2 is to be interpreted and governed under the laws of the State of Washington.

### 3 III. SUMMARY

4 8. This is a complaint under Washington law for fraud, material  
 5 misrepresentation of fact, violation of the Washington Product Liability Act, RCW 7.72.010  
 6 et seq., and breach of contract.<sup>2</sup>

7 9. Timaero contracted with Boeing to purchase twenty-two (22) Boeing Model  
 8 737 MAX aircraft. Boeing represented to Timaero in multiple meetings, marketing  
 9 materials, business proposals, press releases, and publicly that the 737 MAX would not  
 10 require additional simulator training for pilots already certified to fly its predecessor 737  
 11 NG (i.e., will meet Level B non-simulator pilot training requirements), and would be  
 12 airworthy, safe, free from design defects, and in compliance with appropriate aviation  
 13 regulations. Boeing and Timaero expressly contracted in a Purchase Agreement, and  
 14 through seven (7) supplemental agreements thereafter ("the Supplemental Agreements"),  
 15 that no additional simulator training would be required for 737 NG pilots.

16 10. The 737 MAX Boeing designed and manufactured was not safe for flight.  
 17 Lion Air Flight 610 and Ethiopian Airlines Flight 302 crashed, killing all 346 people  
 18 onboard. These deaths are a result of Boeing's illegal actions, willful decisions in designing  
 19 a defective aircraft that fails to meet aviation regulations, and purposeful concealment of  
 20

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 24  
 25 <sup>2</sup> Timaero's fraud claim in its First Amended Complaint was construed under  
 26 Illinois law. In this Third Amended Complaint, Timaero's claims of fraud and material  
 misrepresentation of fact are brought under and pursuant to Washington law, but  
 nevertheless satisfy Illinois law as well.

critical information from and/or deceit of the United States Federal Aviation Administration (“FAA”), foreign regulators, and Boeing’s customers, including Timaro.

11. Boeing has admitted that its illegal actions amount to criminal fraud. On January 7, 2021, Boeing entered into a deferred prosecution agreement (“DPA”) in the United States District Court for the Northern District of Texas. The DPA is attached hereto as Exhibit 1 and includes a series of admissions in a Statement of Facts included as Appendix A to the DPA (“DPA-A”).<sup>3</sup>

12. The criminal information (attached as Exhibit 2) charges Boeing with one count of conspiracy to defraud the FAA in connection with its evaluation of Boeing’s 737 MAX aircraft.<sup>4</sup>

13. The DPA provides that Boeing “fraudulently obtained” a determination from the FAA that the 737 MAX did not require simulator training through a conspiracy spanning at least November 2016 through December 2018. DPA ¶ 4(a).

14. In the DPA, Boeing “admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the Information, and as set forth in the Statement of Facts, and that the allegations described in the Information and the facts described in the Statement of Facts are true and accurate.” DPA ¶ 2. Boeing also agreed that “it will not dispute the Statement of Facts” and “shall not . . . make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by [Boeing]” for its fraud. *Id.* ¶¶ 2, 32.

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<sup>3</sup> Available at <https://www.justice.gov/opa/press-release/file/1351336/download>.

<sup>4</sup> Available at <https://www.justice.gov/opa/press-release/file/1351331/download>.

1           15. Among other things, Boeing also admits in the DPA that “[t]he purpose of  
2 the conspiracy was to defraud the FAA [Aircraft Evaluation Group (“AEG”)] by impairing,  
3 obstructing, defeating, and interfering with the lawful function of the FAA AEG by  
4 dishonest means in connection with its publication of the 737 MAX [Flight Standardization  
5 Board] Report and its differences-training determination for the Boeing 737 MAX, in order  
6 to bring about a financial gain to Boeing and to benefit Boeing Employee-1 [(Mr. Mark  
7 Forkner)] and Boeing Employee-2 [(Mr. Patrick Gustavsson)] in connection with the  
8 Boeing 737 MAX.” DPA-A ¶ 17.

9  
10           16. Pursuant to the DPA, Boeing agreed to pay a total criminal monetary amount  
11 of over \$2.5 billion. *Id.* ¶ 7. A portion of this criminal penalty, specifically \$243,600,000  
12 “represent[s] Boeing’s cost-savings, based on Boeing’s assessment of the cost associated  
13 with the implementation of full-flight simulator [non-Level B] training for the 737 MAX.”  
14 DPA ¶ 9(b).

15  
16           17. One of the “remedial measures” Boeing engaged in following the offense  
17 described in the DPA included “reorganizing the Company’s engineering function to have  
18 all Boeing engineers, as well as the Company’s Flight Technical Team, report through the  
19 Company’s chief engineer rather than to the business units.” DPA ¶ 4(d). Thus, Boeing’s  
20 “business units,” including the sales team, were directly involved in the fraud admitted to  
21 by Boeing in the DPA and that which is disclosed herein.

22  
23           18. Boeing has admitted that its fraudulent misrepresentations and omissions to  
24 the FAA set out in the DPA amount to criminal fraud. Boeing made the same fraudulent  
25 misrepresentations and omissions to Timaero through Boeing and Timaero’s Purchase  
26 Agreement and subsequent Supplemental Agreements and representations at and through



1 delivery of two 737 aircraft, each of which agreement and act incorporates Boeing's  
2 fraudulent misrepresentations and omissions to the FAA. Boeing's fraudulent  
3 misrepresentations and omissions set forth in the DPA amount to civil fraud upon Timaero.  
4

5 19. Timaero is and continues to be damaged by Boeing's actions, including loss  
6 of business, interest accrued on Timaero's loan to purchase the aircraft, Boeing's refusal to  
7 return Timaero's deposit of \$189,224,800, and being in a contract for aircraft that are now  
8 either worthless, commercially damaged beyond repair according to the terms of the  
9 Purchase Agreement, or seriously diminished in value.

#### 10 IV. FACTS

11 20. At all times mentioned herein, Boeing, and each of its officers, employees,  
12 agents, and servants named herein were operating and acting within the scope of their  
13 employment, agency and service, and Boeing was aware of, and ratified and approved the  
14 acts of and misrepresentations and omissions made by each named officer, employee, agent  
15 or servant. Each act, misrepresentation and omission made by each named officer,  
16 employee, agent or servant of Boeing was done in furtherance of Boeing's interest and  
17 substantially assisted Boeing's commission and omission of the wrongful acts alleged  
18 herein.  
19

##### 20 A. The Origins of the 737 MAX Aircraft

21 21. Boeing designed its first 737 aircraft in the 1960s. The 737 aircraft has been  
22 updated since then in various series, such as "Original," "Classic," and "Next Generation"  
23 ("NG"). Boeing's 737 MAX is the latest 737 aircraft series.  
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1           22.     The 737 MAX was designed by Boeing as a competitive answer to a new  
2 version of an airplane developed by one of Boeing's top rivals in commercial airplanes,  
3 Airbus. DPA-A ¶ 5.

4           23.     On December 1, 2010, Airbus announced plans for its A320neo, which  
5 would be a revamped A320 aircraft that would be 15%-20% more fuel efficient by placing  
6 new, larger engines on the existing A320 platform. Boeing's initial response to Airbus'  
7 announcement was that Airbus' decision to revamp an existing aircraft, rather than design  
8 a new one, was a poor business and engineering decision. The acting Chief Executive of  
9 Boeing Commercial Airplanes, James Albaugh, stated, "It's going to be a design change  
10 that will ripple through the airplane" and "I think they will find it more challenging than  
11 they think it will be."<sup>5</sup>  
12

13           24.     In 2011, Boeing considered designing an entirely new model of aircraft to  
14 replace the 737, but pressure was mounting from customers who were considering  
15 purchasing the rival Airbus A320neo. Full-scale design and production of a new aircraft  
16 would require nearly a decade of development, new FAA certification, and additional  
17 training for airline crews. Boeing did not have such time and could not inflict such costs on  
18 its customers.  
19

20           25.     Desperate to retain its market share against Airbus, Boeing instead chose to  
21 redesign the 737. In August 2011, Boeing's Board of Directors, including James McNerney,  
22 David L. Calhoun, Arthur D. Collins, Jr., Linda Z. Cook, Kenneth M. Duberstein, Admiral  
23

24  
25  
26           <sup>5</sup> David Gelles, Natalie Kitroeff, Jack Nicas and Rebecca R. Ruiz, Boeing Was  
'Go, Go, Go' to Beat Airbus With the 737 Max, NEW YORK TIMES (March 23, 2019),  
<https://www.nytimes.com/2019/03/23/business/boeing-737-max-crash.html>.

1 Edmund P. Giambastiani, Jr., Edward M. Liddy, John F. McDonnell, Susan C. Schwab,  
 2 Ronald A. Williams, and Mike S. Zafirovski, authorized the new 737 MAX, which would  
 3 be an update to the previous 737 NG model.<sup>6</sup> However, according to three people present  
 4 for the meeting, before approving plans for a new jetliner called the 737 Max, Boeing's  
 5 Board of Directors discussed how quickly and cheaply it could be built to compete with  
 6 against Airbus, and did not ask detailed questions about the airplane's safety.<sup>7</sup>

8 26. Boeing purposely chose to redesign the old 737 NG rather than build an  
 9 entirely new aircraft to expedite the regulatory approval process by using an "amended type  
 10 certificate." The FAA grants amended type certificates to modifications of previously  
 11 approved aircraft. Boeing knew that if the 737 MAX was certified through an amendment  
 12 of the 737's 55-year-old type certificate, then Boeing could get approval in six years, instead  
 13 of the ten required for a new design, and it would be far cheaper than designing a whole  
 14 new plane.

16 27. Boeing also knew that its own employees could approve most of the aircraft  
 17 on behalf of the FAA as it had effective control of the FAA's certification process. Boeing  
 18 lobbied to expand the FAA's "Organization Designation Authorization" ("ODA"), a  
 19 program that permits the FAA to delegate certifying compliance to aircraft manufacturers.  
 20 Boeing's ODA permitted it to manage and make findings related to type certification  
 21

23 <sup>6</sup> John H. Biggs (resigned May 2011), John E. Bryson (resigned on or about May  
 24 2011), and William M. Daley (resigned Jan 10, 2011) were previously on the Board  
 during the relevant time, but resigned prior to August 2011.

25 <sup>7</sup> Douglas MacMillan, 'Safety was just a given': Inside Boeing's boardroom amid  
 26 the 737 Max crisis, The Washington Post (May 5, 2019),  
<https://www.washingtonpost.com/business/2019/05/06/safety-was-just-given-inside-boeings-boardroom-amid-max-crisis/>.

1 programs, issue airworthiness certificates and approvals, determine conformity, approve  
2 data for major repairs, and approve design changes to products.

3 28. At the time the 737 MAX was certified, Boeing had 1,500 employees in its  
4 ODA program, while the FAA had fewer than 45 employees working on the 737 MAX's  
5 certification. Initially, the FAA delegated 40% of the certification projects to Boeing, but  
6 Boeing pressured the FAA to delegate more control to speed-up the process. Unknown to  
7 Boeing customers, including Timaeo, Boeing ultimately controlled and was permitted to  
8 self-certify 96% of its own work on the 737 MAX, including on critical safety issues.

9 29. Boeing's executive leadership and Board of Directors were responsible for  
10 overseeing the 737 MAX's development and the safety of Boeing's aircraft design and  
11 manufacturing processes. Boeing's Board monitored the progress of 737 MAX through  
12 briefings at its regular meetings as well as other communications. Boeing's executive  
13 leadership and Board knew of the problems with MCAS and either willfully concealed those  
14 facts from customers, regulators, and the flying public to boost the company's profits or  
15 were negligent in their oversight of Boeing's operations.

16 30. Boeing's most senior executives were required by law to be directly involved  
17 in submissions to the FAA for the certification of the 737 MAX. Boeing entered into a  
18 settlement agreement with the FAA on December 18, 2015 to resolve thirteen pending FAA  
19 investigations. In addition to Boeing paying millions of dollars in fines, Boeing was  
20 required to have direct involvement of Boeing "executive-level" management in regulatory  
21 compliance, including safety management and completeness of submissions to the FAA.

22 **B. Certification for the 737 MAX Aircraft and Relevant Personnel**  
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1           31. U.S. regulations require the FAA, an organization within the United States  
2 Department of Transportation, to evaluate and approve airplanes for commercial use. DPA-  
3 A ¶ 6.

4           32. This approval is required prior to Boeing's sale of aircraft in the United  
5 States.

6           33. Such evaluation and approval are also required by the Purchase Agreement  
7 between Boeing and Timaro described herein.

8           34. As part of the evaluation and approval process, the FAA had to make two  
9 distinct determinations: (i) whether the aircraft met U.S. federal airworthiness standards;  
10 and (ii) what minimum level of pilot training would be required for a pilot to fly the aircraft  
11 for a U.S.-based airline. DPA-A ¶ 7.

12           35. The FAA AEG was principally responsible for determining the minimum  
13 level of pilot training required for a pilot to fly the aircraft. DPA-A ¶ 8.

14           36. To make that determination, the FAA AEG compared the new version of the  
15 aircraft (such as the 737 MAX) to a similar, prior version of the aircraft (such as the 737  
16 NG). *Id.*

17           37. After evaluating the differences between the new and prior versions of the  
18 airplane, the FAA AEG mandated the minimum level of pilot training, known as  
19 "differences training," for the new version. *Id.*

20           38. Based on the nature and extent of the differences between the new and prior  
21 version of the airplane, the FAA AEG assigned a level of differences training ranging from  
22 "Level A" through "Level E." These levels of differences training ranged in rigor, with  
23 "Level A" being the least intensive and "Level E" the most intensive. As relevant here,  
24  
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1 “Level B” differences training generally included computer-based training (“CBT”) training, and “Level D” differences training generally included full-flight simulator training. DPA-A ¶ 9.

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4 39. Level B differences training does not require simulator training (i.e., is “non-simulator training”).

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7 40. At the conclusion of the FAA’s evaluation of a new version of an aircraft, the FAA AEG publishes a Flight Standardization Board Report (“FSB Report”). Among other things, the FSB Report contains relevant information about certain airplane systems and parts that the airplane manufacturer was required to incorporate into airplane manuals and pilot-training materials for all U.S.-based airlines that would fly the airplane. The FSB Report also contains the FAA AEG’s differences-training determination. DPA-A ¶ 10.

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13 41. Boeing’s 737 MAX Flight Technical Team was principally responsible for providing to the FAA AEG all information that was relevant to the FAA AEG in connection with the FAA AEG’s publication of the 737 MAX FSB Report. DPA-A ¶ 11.

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17 42. The 737 MAX Flight Technical Team was separate and distinct from another group within Boeing that was responsible for providing information to the FAA for certification of whether the airplane met U.S. federal airworthiness standards. *Id.*

18  
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20  
21 43. From in or around early 2012 until in or around early 2014, Mark Forkner was a Technical Pilot for Boeing’s 737 MAX Flight Technical Team. DPA-A ¶ 12.

22  
23 44. In or around early 2014, Mr. Forkner became Boeing’s 737 MAX Chief Technical Pilot. In that role, Mr. Forkner led the 737 MAX Flight Technical Team. *Id.*

24  
25 45. In or around July 2018, Mr. Forkner left Boeing to work for a major U.S.-based airline. *Id.*

1           46. From in or around mid-2014 until in or around July 2018, Mr. Gustavsson  
2 was a Technical Pilot for Boeing's 737 MAX Flight Technical Team. DPA-A ¶ 13.

3           47. In or around July 2018, after Mr. Forkner left Boeing, Mr. Gustavsson  
4 became Boeing's 737 MAX Chief Technical Pilot. In that role, Mr. Gustavsson led the 737  
5 MAX Flight Technical Team. *Id.*

6           48. Boeing, including its engineering department, understood that the FAA AEG  
7 relied on Mr. Forkner and Mr. Gustavsson, as members of Boeing's 737 MAX Flight  
8 Technical Team, to provide to the FAA AEG all information that was relevant to the FAA  
9 AEG in connection with the FAA AEG's publication of the 737 MAX FSB Report,  
10 including information that could impact the FAA AEG's differences-training  
11 determination. DPA-A ¶ 14.

12           49. Boeing, including its engineering department, also understood that, because  
13 flight controls were vital to flying modern commercial airplanes, differences between the  
14 flight controls of the 737 NG and the 737 MAX were especially important to the FAA AEG  
15 for purposes of its publication of the 737 MAX FSB Report and the FAA AEG's  
16 differences-training determination. DPA-A ¶ 15.

17           50. Upon information and belief, Boeing's operations, including engineering,  
18 testing, FAA compliance, and sales, knew of the issues and defects identified herein. For  
19 example, Mr. Forkner and Mr. Gustavsson reported through Boeing's business units while  
20 carrying out the acts described herein. DPA ¶ 4(d); DPA-A ¶ 11. Thus, Boeing's business  
21 and sales departments knew of the material defects in the 737 MAX described herein.

22           **C. Boeing Seeks an Amended Type Certification for the 737 MAX Aircraft**

51. The development of the 737 MAX aircraft, twenty-two of which Timaro would eventually pay deposits to purchase, began at least as early as January 2012 when Boeing filed an Amended Type Certification application for the aircraft with the FAA. Exhibit 3, “OIG Report,” at 12.<sup>8</sup>

52. Production of the 737 MAX involves manufacture of aircraft that are certified, and then manufacture of additional aircraft for customers that meet those precise certifications. Thus, manufacture of Timaro’s aircraft began in conjunction with Boeing’s Amended Type Certification application filed in January 2012.

53. From the very beginning of the 737 MAX program, Boeing pressured employees to minimize development time and do whatever was necessary to keep the redesign within the amended type certificate. Engineers were pushed to submit technical drawings and designs at roughly double the normal pace. “The timeline was extremely compressed,” an engineer said, “[i]t was go, go, go.”<sup>9</sup> One former designer on the team working on flight controls for the 737 MAX said the group had at times produced sixteen technical drawings a week, double the normal rate. “They basically said, ‘We need something now,’” the designer said.<sup>10</sup>

<sup>8</sup> U.S. Dept. of Transportation, Office of Inspector General, Timeline of Activities Leading to the Certification of the Boeing 737 MAX 8 Aircraft and Actions Taken After the October 2018 Lion Air Accident, pg. 8 dated June 29, 2020, <https://www.oig.dot.gov/sites/default/files/FAA%20Oversight%20of%20Boeing%20737%20MAX%20Certification%20Timeline%20Final%20Report.pdf>.

<sup>9</sup> David Gelles, Natalie Kitroeff, Jack Nicas and Rebecca R. Ruiz, Boeing Was ‘Go, Go, Go’ to Beat Airbus With the 737 Max, NEW YORK TIMES (March 23, 2019), <https://www.nytimes.com/2019/03/23/business/boeing-737-max-crash.html>.

<sup>10</sup> *Id.*



54. Another former engineer who performed flight-testing work said, “there was always talk about how delays of even one day can cost substantial amounts,” and staff were expected to keep their heads down and not speak-up against anything that would delay the project.<sup>11</sup> One manager told an engineer, “Don’t rock the boat. You don’t want to be upsetting executives.”<sup>12</sup> These pressures continued throughout the 737 MAX’s development, “as everyone has it in their head that meeting schedule is most important because that’s what Leadership pressures and messages. All the messages are about meeting schedule, not delivering quality [or safety].”<sup>13</sup>

55. One of the highest pressures from top Boeing management was that under no circumstances should the 737 MAX require any new simulator training for 737 NG trained pilots. Numerous former Boeing employees have reported that senior management, including Keith Leverkus (Vice President and General Manager of the 737 MAX Program) and Michael Teal (737 MAX Program Manager) pressured the 737 MAX team to ensure that no new simulator training for 737 NG pilots was required. Rick Ludtke, an engineer who spent 19 years at Boeing stated, “[a]ny designs we created could not drive any new training that required a simulator. That was a first.”<sup>14</sup>

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<sup>11</sup> Dominic Gates and Mike Baker, The inside story of MCAS: How Boeing’s 737 MAX system gained power and lost safeguards, SEATTLE TIMES (June 24, 2019), <https://www.seattletimes.com/seattle-news/times-watchdog/the-inside-story-of-mcas-how-boeings-737-max-system-gained-power-and-lost-safeguards/>.

<sup>12</sup> *Id.*

<sup>13</sup> Joe Nocera, News Analysis: Boeing sacrificed quality on the altar of shareholder value, LOS ANGELES TIMES, (January 17, 2020), <https://www.latimes.com/business/story/2020-01-17/nocera-boeing>.

<sup>14</sup> David Gelles et al. Boeing Was ‘Go, Go, Go’ to Beat Airbus With the 737 Max, NEW YORK TIMES, (March 23, 2019), <https://www.nytimes.com/2019/03/23/business/boeing-737-max-crash.html>.

**D. Boeing Includes a New and Novel Software in the 737 MAX Aircraft, MCAS, During Initial Development**

56. Like the new version of Airbus’s airplane, the 737 MAX promised increased fuel efficiency over its prior version, the 737 NG. DPA-A ¶ 5.

57. With this increased efficiency, the 737 MAX offered fuel-cost savings for airlines. *Id.*

58. To achieve its promised fuel efficiency, the 737 MAX used larger engines than the 737 NG. DPA-A ¶ 20.

59. The new generation high efficiency engines (known as CFM LEAP-1B engines) were one of the most significant design changes incorporated into the 737 MAX aircraft.<sup>15</sup> This change was difficult to implement because the LEAP-1B engines were larger and could not easily fit under the 737’s relatively low wings. To obtain adequate ground clearance without making more significant and more expensive design changes, Boeing left the wing and fuselage heights nearly unchanged, but moved the engines up and forward in order to maintain the mandatory minimum 17-inch ground clearance from the bottom of the new and larger engines.<sup>16</sup> Boeing was required to keep the previous 737s low wing profile to stay within the old 737-type certificate.

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<sup>15</sup> Boeing Press Release, Aug. 30, 2011 “Boeing Launches 737 New Engine Family with Commitments for 496 Airplanes from Five Airlines,” <https://boeing.mediaroom.com/2011-08-30-Boeing-Launches-737-New-Engine-Family-with-Commitments-for-496-Airplanes-from-Five-Airlines>.

<sup>16</sup> See Anurag Kotoky and Kyunghye Park, “Boeing’s Grounded 737 Max — The Story So Far”, Washington Post, July 9, 2019, [https://www.washingtonpost.com/business/boeings-grounded-737-max-the-story-so-far/2019/07/08/5eb2e4be-a1e6-11e9-a767-d7ab84aef3e9\\_story.html](https://www.washingtonpost.com/business/boeings-grounded-737-max-the-story-so-far/2019/07/08/5eb2e4be-a1e6-11e9-a767-d7ab84aef3e9_story.html); <https://www.latimes.com/local/california/la-fi-boeing-max-design-20190315-story.html>.

1           60. The larger engines, and their placement under the airplane's wings, meant  
2 that the aerodynamics of the 737 MAX differed from those of the 737 NG. DPA-A ¶ 20.

3           61. These different aerodynamics created a new handling characteristic for the  
4 737 MAX that caused the 737 MAX's nose to pitch up during a certain flight maneuver  
5 called a high-speed, wind-up turn. A high-speed, wind-up turn generally involved sharply  
6 turning the airplane at high speed (approximately Mach 0.6-0.8) in a corkscrew-like pattern.  
7 DPA-A ¶ 21.

8           62. The tendency of the 737 MAX to pitch up during certain flight conditions,  
9 which could impact the pilot's control of the aircraft, and created a risk that the aircraft  
10 would stall (lose power) and crash, were exposed through wind tunnel tests conducted very  
11 early during development of the 737 MAX. Thus, Boeing engineers predicted this tendency  
12 early in the design process but monetary pressures, differences training considerations, and  
13 certification expediency were prioritized over safety, engineering, and design.<sup>17</sup>

14           63. Thus, the new mount location of these engines gave the 737 MAX a new and  
15 unacceptable handling characteristic – a propensity for the aircraft's nose to abnormally  
16 pitch up (i.e., the nose would move up and cause the aircraft to climb and/or slow down)  
17 under certain flight conditions.<sup>18</sup>

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25           <sup>17</sup> Dominic Gates and Mike Baker, "The inside story of MCAS: How Boeing's 737  
26 MAX system gained power and lost safeguards," Seattle Times, June 22, 2019,  
<https://www.seattletimes.com/seattle-news/times-watchdog/the-inside-story-of-mcas-how-boeings-737-max-system-gained-power-and-lost-safeguards/>.

<sup>18</sup> *Id.*

64. A pitch-up tendency at low speed could cause a dangerous aerodynamic stall<sup>19</sup> and is not allowed by FAA regulations. An FAA regulation requires that “[n]o abnormal nose-up pitching may occur.... In addition, it must be possible to promptly prevent stalling and to recover from a stall by normal use of the controls.”<sup>20</sup> Such undesirable handling characteristics are not unheard of when an aircraft’s configuration is changed. They can usually be fixed with various well-understood aerodynamic changes, but making such changes is expensive and can delay an aircraft’s certification, and may impact a differences training determination.

65. Notably, a high-speed, wind-up turn was a “certification” maneuver, that is, a maneuver outside the limits of what the 737 MAX would be expected to encounter during a normal commercial passenger flight. Nevertheless, if Boeing did not fix the 737 MAX’s pitch-up characteristic in high-speed, wind-up turns, the FAA could determine that the 737 MAX did not meet U.S. federal airworthiness standards. DPA-A ¶ 22.

66. Another problem that came to light during Boeing’s early testing was that pilots would not feel a smooth and continuous increase in resistance on the control column during certain high-speed maneuvers. Rather, pilots felt a slackening of resistance. This condition violated FAA airworthiness regulations, which require planes to handle with smoothly changing control column forces.

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<sup>19</sup> A “stall” is a dangerous condition for aircraft and occurs when there is insufficient air moving across the aircraft’s wings to keep the aircraft flying. This usually – but not always – happens when the aircraft is moving too slowly through the air. A stall causes the aircraft to suddenly drop and can cause an even more dangerous spin. Stopping the stall requires the pilot to take quick and decisive action to return the aircraft to safe flight.

<sup>20</sup> 14 C.F.R. Sec. 25.203(a) – Stall Characteristics.

1           67. The most reliable way to restore the aircraft's stability would have been to  
2 make structural changes to the frame. However, Boeing chose not to make such changes  
3 because then the 737 MAX could no longer be certified under the old 737-type certificate.  
4 Boeing could not accept such delays and increased costs and opted to prioritize money and  
5 certification considerations over engineering and safety. As shown herein, Boeing's actions  
6 in developing and altering MCAS did not adequately remedy the identified defects above  
7 and did not provide for the safe operation of the 737 MAX.

8  
9           68. Rather than making expensive aerodynamic changes, Boeing decided to  
10 attempt to fix the 737 MAX's pitch-up problem with software, but they failed to properly  
11 disclose this design decision to the FAA or customers, including Timaro.

12  
13           69. In doing so, Boeing ignored the fact that the 737 MAX did not have the  
14 added redundancies that a fly-by-wire aircraft has. The software that Boeing designed  
15 would automatically activate a system that applied downward stabilizer trim in order to  
16 reduce the force the pilots needed to use on the control wheel to push the nose down. This  
17 software—called MCAS—was designed into the 737 MAX to deal with the pitch-up  
18 tendency during wind-up turns, so it activated when it sensed the aircraft was near a stall  
19 and was experiencing high G-forces.<sup>21</sup>

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25           <sup>21</sup> Dominic Gates and Mike Baker, "The inside story of MCAS: How Boeing's 737  
26 MAX system gained power and lost safeguards," Seattle Times, June 22, 2019,  
<https://www.seattletimes.com/seattle-news/times-watchdog/the-inside-story-of-mcas-how-boeings-737-max-system-gained-power-and-lost-safeguards/>.

1           70. MCAS works by receiving data from an angle-of-attack sensor on the  
2 plane's nose. If the data shows that the plane is pitching too high, the MCAS directly  
3 engages the tail's horizontal stabilizer to level the plane. No pilot input is necessary.<sup>22</sup>  
4

5           71. MCAS also makes the 737 MAX appear to pilots as handling like older 737s.  
6 Boeing took a position that pilots did not need to know about the MCAS or be trained to  
7 use the new system to allow the 737 MAX to earn a common "type rating" with existing  
8 737 models. This allowed airlines to minimize training of pilots moving from the 737 NG  
9 to the 737 MAX.

10           72. Thus, to fix the pitch-up characteristic, Boeing created MCAS and  
11 incorporated it as a part of the 737 MAX's flight controls. MCAS was an aircraft "part"  
12 within the meaning of Title 18, United States Code, Sections 31(a)(7) and 38. In operation,  
13 MCAS would automatically cause the airplane's nose to pitch down by adjusting the 737  
14 MAX's horizontal stabilizer (a horizontal tail located near the rear of the airplane). As  
15 originally designed, MCAS could only activate during a high-speed, wind-up turn. DPA-A  
16 ¶ 23.  
17

18           73. For the 737 MAX, MCAS as originally designed could only affect the tail's  
19 horizontal stabilizer a maximum of about 0.6-degrees during a period of about 10 seconds.  
20 MCAS also originally had multiple angle-of-attack sensors to provide data to MCAS.  
21 Finally, Boeing's original design included an indicator light that would appear on the flight  
22 control panel if there was a failure of the MCAS flight control system.  
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25           <sup>22</sup> See, Dominic Gates and Mike Baker, The inside story of MCAS: How Boeing's  
26 737 MAX system gained power and lost safeguards, SEATTLE TIMES (June 24, 2019),  
<https://www.seattletimes.com/seattle-news/times-watchdog/the-inside-story-of-mcas-how-boeings-737-max-system-gained-power-and-lost-safeguards/>.

74. MCAS had never been used on a commercial aircraft and never should have been used on a passenger aircraft without full disclosure to the FAA, which Boeing intentionally did not do. MCAS was originally developed for the KC-46A Pegasus Air Force Tanker around the early 2000s.<sup>23</sup> The KC-46A's MCAS was designed by Boeing to rely on inputs from two angle of attack ("AOA") sensors and with limited power to move the tanker's nose—deliberate checks against the system acting erroneously or causing a pilot to lose control.<sup>24</sup>

**E. Boeing Conceals MCAS's Significance from, and Misrepresents its Significance to, Regulators**

75. MCAS was briefly presented to the FAA in a March 21, 2012 General Familiarization Meeting, but was not an area of emphasis. Exhibit 3 at 13.

76. The FAA allowed Boeing to proceed with its proposal for the 737 MAX aircraft on March 22, 2012 one day after the General Familiarization Meeting. MCAS was included in the accepted Amended Type Certificate application as a modification to the previous aircraft model's flight control system software. Exhibit 3 at 14.

77. On May 1-2, 2012, the FAA and Boeing held a Technical Familiarization Meeting. In Boeing's presentations at this meeting, MCAS was included as a provisional modification to address the plane's tendency to pitch upwards at high speeds. However, MCAS was still not an area of emphasis; only 23 of 482 slides covered primary aircraft

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<sup>23</sup> Alison Sider and Andrew Tangel, Before 737 MAX, Boeing's Flight-Control System Included Key Safeguards, THE WALL STREET JOURNAL (Sept. 29, 2019), <https://www.wsj.com/articles/before-737-max-boeings-flight-control-system-included-key-safeguards-11569754800>.

<sup>24</sup> *Id.*

1 flight controls, and only 2 lines of text within those almost 500 slides—covered over a 2-  
2 day period—referenced MCAS.

3 78. In a November 27, 2012 email that Boeing produced to the House T&I  
4 Committee, a Boeing employee noted that an MCAS light indication on the flight control  
5 panel had been removed enabling Boeing to hide MCAS's existence.  
6

7 79. From February 15 – November 14, 2013, the FAA reviewed and accepted  
8 Boeing's Master Certification Plan, which is a key document in the certification process  
9 that describes how the FAA and Boeing planned to certify the 737 MAX aircraft, including  
10 the method for testing key items.

11 80. During this same time period, between 2012 and 2014, Boeing and FAA  
12 collaborated to establish the initial certification basis for the 737 MAX, which was accepted  
13 on February 6, 2014.  
14

15 81. Prior to and during the General Familiarization Meeting, the Technical  
16 Familiarization Meeting, the Master Certification Plan process, and the initial certification  
17 basis process, Boeing knew that MCAS's use on the 737 MAX was new and novel. Boeing  
18 knew that disclosing MCAS's novelty to customers and regulators would jeopardize a Level  
19 B differences training determination by the FAA. But instead of disclosing this fact and  
20 accepting the resulting cost and delay in favor of safety, Boeing opted for money and  
21 certification expediency and hid these design deficiencies from the FAA and Timaro  
22 despite having a duty to speak.  
23

24 82. Prior to and during the General Familiarization Meeting, the Technical  
25 Familiarization Meeting, the Master Certification Plan process, and the initial certification  
26 basis process, Boeing knew that the version of MCAS installed on KC-46A materially



1 differed from the version of MCAS installed on the 737 MAX. For example, KC-46A used  
2 a median input from AOA sensors on both sides of the aircraft, while the 737 MAX used  
3 only AOA sensor data from one sensor. The KC-46A MCAS did not activate repeatedly,  
4 like the 737 MAX MCAS. Further, the KC-46A MCAS included an automated pilot control  
5 column cutout, which will electronically disable the airplane's trim system if the pilot's  
6 control column is pulled back beyond a specified point. The 737 MAX MCAS did not.

8 83. Prior to and during the General Familiarization Meeting, the Technical  
9 Familiarization Meeting, the Master Certification Plan process, and the initial certification  
10 basis process, Boeing knew that MCAS on the 737 MAX controlled the aircraft's movement  
11 in a new way. Boeing knew also that since MCAS on the 737 MAX controlled the aircraft's  
12 movement in a new way, Boeing would not be able to secure Level-B differences training  
13 determination for the 737 MAX.

15 84. Accordingly, at least as early as March 2012, Boeing knew that MCAS posed  
16 a severe threat to obtaining Level B non-simulator differences training for the 737 MAX  
17 aircraft. Boeing knew as early as 2012 that a truthful and candid disclosure of MCAS's use  
18 and intended use on the 737 MAX would result in additional simulator training, or would  
19 severely jeopardize Level B non-simulator differences training.

21 85. For example, in 2012, it took a Boeing test pilot more than 10 seconds to  
22 respond to uncommanded MCAS activation in a flight simulator, which the pilot found to  
23 be "catastrophic."<sup>25</sup>

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<sup>25</sup> Transportation Committee Final Report, supra note 14, at 87.

86. Upon information and belief, also between 2012 and early 2014, Boeing was performing testing and analyses related to the use of MCAS on the 737 MAX and possessed information about the necessity of expanding MCAS's use beyond its initial representations to the FAA, as further explained herein. Upon information and belief, Boeing's testing and analysis related to the use of MCAS on the 737 MAX between 2012 and early 2014 was used in modifying and updating MCAS during 2015. Such modifications and updates ultimately expanded MCAS's use at least as early as March 2016, as further explained herein.

87. Boeing knew between at least 2012 and early 2014 that adding MCAS to the 737 MAX made false its promise of no simulator training for pilots already certified to fly its predecessor 737 NG (Level B non-simulator pilot training requirements) so, instead of disclosing MCAS, Boeing concealed it to prioritize money and certification expediency over safety.

88. As a result, Boeing knowingly made material misrepresentations that it knew were false and/or were made with reckless disregard for the truth, and material omissions, to the FAA to approve MCAS and to certify the 737 MAX without any additional pilot simulator training. Boeing made the same misrepresentations and omissions to Timaero.

89. Indeed, as of July 7, 2024 Boeing intends to plead Guilty<sup>26</sup> to a criminal information that alleges Boeing "knowingly and willfully, and with the intent to defraud, conspired and agreed together with others to defraud the United States by impairing, obstructing, defeating, and interfering with, by dishones means, the lawful function of a

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<sup>26</sup>United States v. The Boeing Company (4:21-cr-00005) (N.D. Tex.) ECF #204.

1 United States government agency, to wit, the Federal Aviation Administration Aircraft  
2 Evaluation Group (“FAA AEG”) within the United States Department of Transportation, in  
3 connection with the FAA AEG’s evaluation of the Boeing 737 MAX airplane’s  
4 Maneuvering Characteristics Augmentation System (“MCAS”), including for purposes of  
5 the 737 MAX Flight Standardization Board Report (“FSB Report”) and the 737 MAX  
6 differences-training determination.”<sup>27</sup>

8 90. Boeing made each of false statements above to the FAA with the intention  
9 that Timacro would make its purchasing decisions based on those particular statements

10 91. As Boeing knew, “Level B” differences training was significantly less  
11 expensive for airlines to complete than “Level D.” For example, a pilot could complete  
12 “Level B” differences training from anywhere in the world in a matter of hours using a  
13 computer or tablet. In contrast, a pilot could complete “Level D” differences training only  
14 by appearing in person wherever the pilot’s airline operated a full-flight simulator. Apart  
15 from the cost of acquiring one or more multimillion-dollar simulators and other related  
16 expenses, airlines that were required by the FAA AEG to train pilots on a full-flight  
17 simulator could also lose revenue that the pilot might otherwise have generated from flying  
18 airline passengers during that time. Accordingly, if the FAA AEG required a less rigorous  
19 level—such as “Level B”—of differences training for the 737 MAX in the 737 MAX FSB  
20 Report, the 737 MAX would be a more attractive option for Boeing’s airline customers  
21 already flying the 737 NG than switching to an entirely new airplane, such as the new  
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<sup>27</sup>United States v. The Boeing Company (4:21-cr-00005) (N.D. Tex.) ECF #1.

version of Airbus' airplane, as such customers would save significant money in pilot-training costs by transitioning to the 737 MAX. DPA-A ¶ 18.

92. Principally for this reason, Boeing's stated objectives in designing the 737 MAX included securing the FAA AEG's determination to require no greater than "Level B" differences training in the 737 MAX FSB Report. Mr. Forkner and Mr. Gustavsson understood as much. For example, in or around November 2014, Mr. Gustavsson wrote in an internal Boeing electronic chat communication to Mr. Forkner that "nothing can jepordize [sic] level b[.]" In or around December 2014, Mr. Forkner wrote in an email to another Boeing employee that "if we lose Level B [it] will be thrown squarely on my shoulders. It was [Mr. Forkner], yes [Mr. Forkner]! Who cost Boeing tens of millions of dollars!" DPA-A ¶ 19.

93. Boeing was motivated to do all that was necessary to not have any simulator training because it promised to pay certain customers \$1 million per plane if simulation training was found necessary by the FAA. Exhibit 4, "House Report," at 24, 138, and 148.<sup>28</sup>

**F. Boeing Conceals MCAS's Significance from, and Misrepresents its Significance to, Customers, Including Timaero**

94. As described herein, Boeing's "ground rule" for engineers during the development of the 737 MAX was to avoid any features that would require pilot training in

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<sup>28</sup> The House Committee on Transportation & Infrastructure, Final Committee Report, The Design, Development & Certification of the Boeing 737 MAX, dated Sept. 2020,

[https://transportation.house.gov/imo/media/doc/2020.09.15%20FINAL%20737%20MAX%20Re  
port%20for%20Public%20Release.pdf](https://transportation.house.gov/imo/media/doc/2020.09.15%20FINAL%20737%20MAX%20Report%20for%20Public%20Release.pdf).

1 a flight simulator.<sup>29</sup> Certification expediency should never drive the design process of a  
 2 passenger jet when it diminishes passenger safety, but it did at Boeing with the 737 MAX.  
 3 A Boeing engineer who worked on the cockpit design of the 737 MAX said “the company  
 4 was trying to avoid costs and trying to contain the level of change. They wanted the  
 5 minimum change to simplify the training differences, minimum change to reduce costs, and  
 6 to get it done quickly.”<sup>30</sup> As described more fully below, this “ground rule” caused Boeing  
 7 to decide to hide the operation—and even the existence—of MCAS from Timaro or other  
 8 MAX purchasers and their pilots so that they would not even suspect that additional training  
 9 might be necessary.  
 10

11 95. Boeing officials recognized that disclosing MCAS’s existence to customers  
 12 would result in “a greater certification and training impact” as early as 2013 so they  
 13 intentionally concealed this design and put passenger safety at risk. Documents made public  
 14 by Boeing map out Boeing’s strategy of deception about MCAS, for example directing that  
 15 it could be referred to by name only within Boeing, but to the outside world directing that  
 16 it be called an “addition to speed trim.”<sup>31</sup>  
 17

18 96. In a redacted email dated May 4, 2013 addressed to “BCA Senior Chiefs and  
 19 Functional Leaders,” a Boeing employee disclosed a “current list of the remaining 14 open  
 20 significant trade studies/risk issues,” which included “Differences Pilot Training: Ensuring  
 21

22  
 23 <sup>29</sup> David Gelles, Natalie Kitroeff, Jack Nicas, and Rebecca R. Ruiz, “Boeing Was  
 24 ‘Go, Go, Go’ to Beat Airbus With the 737 Max” New York Times Mar. 23, 2019,  
<https://www.nytimes.com/2019/03/23/business/boeing-737-max-crash.html>.

<sup>30</sup> *Id.*

25 <sup>31</sup> Jamie Freed and Tracy Rucinski, “Factbox: In Boeing internal messages,  
 26 employees distrust the 737 MAX and mock regulators,” Reuters, Jan. 9, 2020,  
<https://www.reuters.com/article/us-boeing-737max-factbox/factbox-in-boeing-internal-messages-employees-distrust-the-737-max-and-mock-regulators-idUSKBN1Z90NP>.

1 that the level of change on the 737 MAX keeps the [d]ifferences to 16 hours or less of Level  
 2 B training. Concerns include the impact of . . . the Autopilot roll saturation change driven  
 3 by the addition of MCAS to the flight controls system.”<sup>32</sup> Boeing also knew since at least  
 4 2013 that the FAA was “struggling to approve [Boeing’s] application position regarding  
 5 flight deck alerting.”<sup>33</sup>

7 97. On June 7, 2013, a Boeing employee wrote to colleagues in an email, “If we  
 8 emphasize MCAS is a new function there may be greater certification and training  
 9 impact...Externally we would communicate it is an addition to Speed Trim...Internally  
 10 continue using the acronym MCAS...” *Id.* at 93.

11 98. In a July 2014 email chain, a Boeing employee suggested that guidance  
 12 should be given to pilots on how to respond to a certain alert. Mr. Forkner, Boeing’s 737  
 13 MAX Chief Technical Pilot and Boeing’s primary correspondent with the FAA related to  
 14 pilot training for the 737 MAX, responded that Boeing could not provide such instructions  
 15 as that could result in additional pilot training and that is “the box we’re painted into with  
 16 the Level B training requirements” (no simulator training). Exhibit 5 at 3. “A bad excuse,  
 17 but what I’m being pressured into complying with.” *Id.*

19 99. Boeing employees acting within the scope of their employment met several  
 20 times with Timaro representatives to market and sell the 737 MAX.

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24 <sup>32</sup> U.S. Congress Hearing Before the Committee on Transportation and  
 25 Infrastructure House of Representatives. “The Boeing 737 Max: Examining the Design,  
 26 Development, and Marketing of the Aircraft” (Date: Oct. 30, 2019) page 133; Text From:  
 Congress.gov.

<sup>33</sup> *Id.*

1           100. On June 19, 2013, Ray Conner (President and CEO of Boeing Commercial  
2           Airplanes) and Vyacheslav Soloviev (on behalf of Timaero) entered into a letter of intent in  
3           Le Bourget, France to purchase (20) 737 MAX aircraft valued at more than \$2 billion. The  
4           parties then negotiated the terms of the Purchase Agreement.

5  
6           101. In a draft news release dated June 19, 2013 reflecting Timaero's  
7           commitment to purchase the aircraft, Boeing wrote, "[t]he 737 MAX incorporates the latest  
8           engines . . . to deliver the highest efficiency . . . in the single-aisle market . . . [a]irlines  
9           operating the 737 MAX will see a 13 percent fuel-use improvement over today's most fuel  
10          efficient single-aisle airplanes . . . ." Boeing's draft press release was sent via email on June  
11          18, 2013 by Alexander Basyuk (Boeing Sales Director, Russia), Elena Alexandrova  
12          (Boeing Communications Director, Russia), and Dmitry Krol (Boeing Regional Director  
13          Communications) to Timaero representatives Vyacheslav Soloviev and Ivan Vasyukov.

14  
15          102. On August 12, 2013, Mr. Basyuk and Jorge Molina Acosta (Boeing  
16          Regional Marketing Director) met in Moscow with Mr. Soloviev and Mr. Vasyukov from  
17          Timaero. Mr. Acosta specifically flew from Seattle to give Timaero a presentation on the  
18          737 MAX and discuss Boeing's sale proposal. On August 19, 2013, Mr. Basyuk gave a  
19          presentation on the 737 MAX to Timaero representatives in Moscow. On September 12,  
20          2013, Mr. Basyuk met again in Moscow with Mr. Soloviev and Mr. Vasyukov, to further  
21          discuss the 737 MAX. On November 10-14, 2013, Timaero representative Igor Komlev met  
22          with Boeing representatives, including George Peppes (Boeing Regional Marketing  
23          Director), in Muscat, Oman regarding the 737 MAX. On November 21, 2013, Boeing  
24          representatives, including Mr. Acosta, Jordan Weltman, Mher Papyan, Tim Myers,  
25  
26

1 Anastasia Ivanischeva, and Richard Hammond, met in Moscow with Timaero  
2 representatives, Igor Komlev and Ivan Vasyukov, relating to the 737 MAX.

3 103. Boeing further marketed the 737 MAX's advantages, including its fuel  
4 efficiency, in business proposals sent via email dated August 8, 2013 and September 12,  
5 2013 from Mr. Acosta, Mr. Basyuk, Christopher Brown, Alexander Jabenko (Sales Program  
6 Manager), , and Mher Papyan (Finance Director) to Timaero representatives Vyacheslav  
7 Soloviev and Ivan Vasyukov.  
8

9 104. Boeing represented—including during the above-referenced meetings with  
10 Timaero representatives—that the 737 MAX would not require additional simulator  
11 training for pilots already certified to fly its predecessor 737 NG (Level B non-simulator  
12 pilot training requirements), and would be airworthy, safe, free from design defects, and in  
13 compliance with appropriate aviation regulations. Timaero relied on each of these  
14 representations in deciding whether to purchase any 737 MAX aircraft. Timaero would not  
15 have purchased any 737 MAX aircraft, executed the Purchase Agreement, executed the  
16 Supplemental Agreements, or accepted delivery of any aircraft had Boeing disclosed the  
17 information in Boeing's possession and control identified in this complaint.  
18

19 105. A November 19, 2013, Boeing 737 MAX Overview presentation by Scott  
20 Fancher (Vice President and General Manager Airplane Development Boeing Commercial  
21 Airplanes) and Randy Tinseth (Vice President Marketing Boeing Commercial Airplanes)  
22 states the 737 MAX would be "14% more fuel efficient" over the previous 737 NG and  
23 operating the 737 MAX would be similar to the 737 NG for pilots.  
24  
25  
26



106. Boeing oversold the benefits of the MAX while underplaying, denying, or failing to disclose material dangers. This is consistent with Boeing's self-described practice of having its sales force "lie [to purchasers] about how awesome our airplanes were."<sup>34</sup>

107. Timaero relied on each of the above statements in deciding whether to execute the Purchase Agreement.

#### **G. Timaero and Boeing Execute a Purchase Agreement**

108. On January 10, 2014, Boeing and Timaero entered into Purchase Agreement Number PA-04022 ("Purchase Agreement") for the purchase and sale of twenty (20) Boeing Model 737-8 aircraft ("737 MAX").<sup>35</sup>

109. On January 10, 2014, Timaero secured a loan to satisfy its financial obligations under the Purchase Agreement.

110. The Purchase Agreement incorporated the terms and conditions of the Aircraft General Terms Agreement dated January 10, 2014, identified as VEB-AGTA.

111. Sean McCreery, a Director of Timaero, signed the Purchase Agreement based on Boeing's representations above, including for instance Boeing's fraudulent misrepresentations concerning Level B non-simulator training and proper and valid certification of the 737 MAX.

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<sup>34</sup> Michael Laris, "Messages show Boeing employees knew in 2016 of problems that turned deadly on the 737 MAX," The Washington Post, Oct. 18, 2019, [https://www.washingtonpost.com/local/trafficandcommuting/text-messages-show-boeing-employees-knew-in-2016-of-problems-that-turned-deadly-on-the-737-max/2019/10/18/8578c990-f1ca-11e9-89eb-ec56cd414732\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/text-messages-show-boeing-employees-knew-in-2016-of-problems-that-turned-deadly-on-the-737-max/2019/10/18/8578c990-f1ca-11e9-89eb-ec56cd414732_story.html).

<sup>35</sup> The Purchase Agreement and exhibits and the Supplemental Agreements thereto contain Boeing's confidential business information. Accordingly, Timaero does not attach them here. Timaero can file these documents under seal at the Court's request, if Boeing does not agree to waive confidentiality for the purposes of this litigation.

1           112. The Purchase Agreement also incorporates numerous letter agreements,  
2 tables, exhibits, and the Supplemental Agreements, as explained herein.

3           113. The Purchase Agreement provides in relevant part that “Boeing will  
4 manufacture each aircraft to conform to the appropriate Type Certificate issued by the  
5 United States Federal Aviation Administration (FAA) for the specific model of aircraft and  
6 will obtain from the FAA and furnish to Customer at Delivery of each aircraft either a  
7 Standard Airworthiness Certificate or an Export Certificate of Airworthiness issued  
8 pursuant to Part 21 of the Federal Aviation Regulations.” Boeing did not comply with these  
9 requirements. Had Timaero known of Boeing’s noncompliance, Timaero would not have  
10 purchased or accepted delivery of the aircraft.  
11

12           114. Boeing and Timaero expressly contracted in the Purchase Agreement that no  
13 additional simulator training would be required for 737 NG pilots: Section 2, titled “Flight  
14 Training,” of Supplemental Exhibit CS1-1 to the Purchase Agreement states, “737 MAX  
15 transition training will consist of the following...737 MAX differences training course” and  
16 the “training materials” include “737 MAX Pilot Differences Computer Based Training  
17 courseware.” Supplemental Exhibit CS1-2 to the Purchase Agreement at Section 2, titled  
18 “Flight Training,” also states, “Boeing will provide flight crew differences training to  
19 acquaint . . . students . . . with operational, systems and performance differences between  
20 Customer’s newly-purchased Aircraft and an aircraft of the same model currently operated  
21 by Customer” and the “[t]raining materials” provided include “Flight Differences Computer  
22 Based Training Courseware.”  
23

24           115. Timaero relied on this representation, among others, in deciding whether to  
25 execute the Purchase Agreement.  
26

1           116. Boeing did not disclose to Timaero prior to execution of the Purchase  
2 Agreement in January 2014 that MCAS's use on the 737 MAX was new and novel as to the  
3 737 MAX aircraft. Boeing did not disclose to Timaero that MCAS's use on the 737 MAX  
4 would jeopardize a Level B differences training determination by the FAA. To the contrary,  
5 Boeing misrepresented in the Purchase Agreement that the 737 MAX would only require  
6 Level B differences training. Had Boeing disclosed the truth about MCAS to Timaero it  
7 would not have executed the Purchase Agreement.  
8

9           117. Boeing did not disclose to Timaero that the version of MCAS installed on  
10 KC-46A differed from the version of MCAS installed on the 737 MAX. Boeing did not  
11 disclose to Timaero that MCAS on the 737 MAX controlled the aircraft's movement in a  
12 new way. Exhibit 6, "JATR," at 13-14. Boeing did not disclose to Timaero that MCAS on  
13 the 737 MAX controlled the aircraft's movement in a new way such that Boeing would not  
14 be able to secure Level-B differences training for the 737 MAX. To the contrary, Boeing  
15 misrepresented in the Purchase Agreement that the 737 MAX would only require Level B  
16 differences training. Had Boeing disclosed the truth about MCAS to Timaero it would not  
17 have executed the Purchase Agreement.  
18

19           118. Boeing promised as of January 10, 2014 to deliver 20 aircraft that required  
20 only Level B non-simulator training. However, Boeing knew that its representations were  
21 not true and that its promise to deliver 20 aircraft from the 2014 Purchase Agreement with  
22 only Level B non-simulator training would not be fulfilled. Boeing never intended that its  
23 promises would be fulfilled. Timaero relied on Boeing's misrepresentations in executing  
24 the Purchase Agreement. Timaero would not have entered into the Purchase Agreement had  
25 Boeing disclosed that the truth about MCAS disclosed herein.  
26

1           119. After signing the Purchase Agreement, Boeing continued to make the same  
2 representations to Timaero that it had made prior to execution of the Purchase Agreement,  
3 including misrepresentations concerning differences training for the 737 MAX.

4           120. On January 21, 2014, Alexander Basyuk (Boeing Sales Director, Russia) met  
5 with Timaero representative Ivan Vasyukov in Moscow relating to converting Timaero's  
6 orders for 737-800 aircraft to 737 MAX.

7           121. On January 28, 2014, Jorge Molina Acosta (Boeing Regional Marketing  
8 Director) met with Timaero representatives Ivan Vasyukov and Igor Komlev in Moscow.  
9 Mr. Acosta gave a presentation entitled, "737 MAX X Overview," and presented the  
10 "advantage[s]" of the 737 MAX.  
11

12           122. Between March 22-29, 2014, Mr. Basyuk brought Timaero representative  
13 Igor Komlev to Boeing's Seattle facilities. During this trip, Mr. Komlev met with numerous  
14 Boeing representatives, including Stephen Clark (Business Director), Charles Leach  
15 (Managing Director, Commercials Airplanes Contracts), Karl Hamavand (Customer  
16 Engineer), Wes Bare (Boeing), Jorge Molina Acosta (Boeing Regional Marketing Director),  
17 Matthew Wilks (Vice President Customer Support), Francois Siki (BCA Contracts),  
18 Alexander Jabenko (Sales Program Manager), Frank Wolz (Regional Manager, Customer  
19 Engineering), and Mher Papyan (Finance Director). In the course of these meetings, Boeing  
20 representatives marketed the 737 MAX as not requiring additional simulator training for  
21 pilots already certified to fly its predecessor 737 NG (Level B non-simulator pilot training  
22 requirements), and further represented that the aircraft would be airworthy, safe, free from  
23 design defects, and in compliance with appropriate aviation regulations.  
24  
25  
26

123. A July 2014 Boeing press release states, “Pilots already certified on the Next-Generation 737 will not require a simulator course to transition to the 737 MAX.”<sup>36</sup> Unknown to customers, including Timaero, Boeing did not have any FAA approval or agreement on the 737 MAX’s level of training to make such statements.

124. Boeing knew that material features of the 737 MAX were not yet evaluated by the FAA, specifically whether the 737 MAX would warrant additional simulator training for 737 NG pilots. Despite this, Boeing purposely misled customers, including Timaero at, during, around, and prior to execution of the Purchase Agreement and the Supplemental Agreements, that the 737 MAX would not require additional simulator training for 737 NG trained pilots because this was an important cost saving and selling feature.

125. Consistent with the foregoing representations to Timaero, Boeing marketing materials provided to customers state that “integrating the new 737 MAX is an easy proposition. As you build your 737 MAX fleet, millions of dollars will be saved because of its commonality with the Next-Generation 737”:



<sup>36</sup> See <https://boeing.mediaroom.com/2014-07-11-Boeing-Selects-Supplier-for-737-MAX-Full-Flight-Simulator>.

<sup>37</sup> Easy To Operate, BOEING, <http://www.boeing.com/commercial/737max/by-design/#/operational-commonality>.

Boeing consistently represented that the 737 MAX would not require simulator training, in spite of the fact that Boeing knew its modifications from the old 737 certification would require such training, because Boeing intended to mislead the FAA to obtain the non-simulator certification and mislead customers, including Timaero, into buying 737 MAX aircraft in reliance upon Boeing's misrepresentations.

126. Boeing's representations to Timaero directly led to Timaero entering into the Purchase Agreement and the Supplemental Agreements (discussed below). Boeing knew these representations were false and misleading. In fact, Boeing's fraudulent marketing campaign has since been revealed, as "Boeing is [now] recommending 737 MAX simulator training in addition to computer-based training for all MAX pilots prior to return to service of the 737 MAX."<sup>38</sup>

127. Boeing advertised and communicated to customers, including Timaero at, during, around, and prior to execution of the Purchase Agreement and the Supplemental Agreements, that the 737 MAX would not require additional simulator training for 737 NG certified pilots, and there would be no major differences between the 737 MAX and its predecessor 737 NG. However, Boeing knew or should have known that these representations were false, misleading, and/or in reckless disregard of the truth. In an internal FAA email dated May 10, 2015, an FAA employee stated, "[w]e have reason to believe that Boeing's assessment of B Level training differences (Computer Based Training) between the MAX and NG will be insufficient. This has been communicated to Boeing over the past two years [since 2013] through a series of formal letters and

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<sup>38</sup> <https://boeing.mediaroom.com/news-releases-statements?item=130596>.

1 **issue Papers.”**<sup>39</sup> The FAA employee further stated that “Boeing is advertising and  
 2 communicating to their customers what they ‘desire’ on issues that have not yet been  
 3 evaluated. The 737 MAX is not a simple derivative of its previous model. It is a very  
 4 complex modification incorporating many new and novel features . . . Boeing is doing  
 5 everything they can to be exempt from the new certification rules and keep the aircraft the  
 6 same type rating with minimal training differences.”<sup>40</sup>  
 7

8 128. A May 10, 2015 FAA Memorandum states, “[f]or the past 3 years, Boeing  
 9 has continually argued with the [FAA] that they cannot meet the latest amendments of  
 10 aircraft certification regulations due to the impact on flight crew training,” and “that  
 11 computer based training is sufficient to train pilots currently qualified on the NG to the  
 12 MAX differences.”<sup>41</sup> The FAA “disagree[d] with this assessment” because “[a]s the [737  
 13 MAX] project has evolved, Boeing has been forced to make several substantial systems  
 14 changes...”<sup>42</sup> Despite the FAA’s position, however, Boeing continued to represent to  
 15 customers, including Timaeo at, during, around, and prior to execution of the Purchase  
 16 Agreement and the Supplemental Agreements, that the 737 MAX would not require  
 17 additional simulator training for pilots already certified to fly its predecessor 737 NG (Level  
 18 B non-simulator pilot training requirements). As discussed below, from the beginning of  
 19  
 20

21 \_\_\_\_\_  
 22 <sup>39</sup> U.S. Congress Hearing Before the Committee on Transportation and  
 23 Infrastructure House of Representatives. “The Boeing 737 Max: Examining the Design,  
 Development, and Marketing of the Aircraft” (Date: Oct. 30, 2019). Text from:  
 Congress.gov; page 232.

24 <sup>40</sup> *Id.*

25 <sup>41</sup> U.S. Congress Hearing Before the Committee on Transportation and  
 26 Infrastructure House of Representatives. “The Boeing 737 Max: Examining the Design,  
 Development, and Marketing of the Aircraft” (Date: Oct. 30, 2019) page 236; Text From:  
 Congress.gov.

<sup>42</sup> *Id.*



the 737 MAX program, Boeing set out on a scheme to hide from and/or misrepresent material information to the FAA and its customers, including Timaro, and to wrongfully induce and/or mislead (in Boeing's words, "Jedi-mind trick") the FAA into believing that no additional simulator training for 737 NG pilots was required.

129. As a result of Boeing's misrepresentations and omissions to its customers, including Timaro, that no additional simulator training would be required, Boeing's management and its misguided marketing led the aircraft's design—not the engineers. In fact, as shown herein, Boeing's management purposely concealed and recklessly ignored the advice of its engineers. Pressures from Boeing senior management forced employees to do all that was necessary to ensure the 737 MAX's design and regulatory approval matched its marketing and selling promises. These actions led to an unsafe design, and an unwarranted certification. Boeing purposely misrepresented and withheld critical information from and deceived the FAA, foreign regulators, and Boeing customers, including Timaro, that would have revealed that a Level B non-simulator differences training determination was not possible, and that simulator training was in fact required.

**H. Boeing Updates MCAS to Expand its Use, Ignores Safety Protocols, and Fails to Disclose Critical Design Changes to Timaro or the FAA or the EASA During the Design and Development of the 737 MAX**

130. Rather than concede the truth that additional pilot training would be needed, Boeing intentionally altered the MCAS design to get the system certified quickly and improperly without additional pilot training despite knowing such training should be required. Boeing:

- removed the two AOA sensor design, and instead relied on a single AOA sensor to trigger MCAS, which removed a known safeguard, was against industry norm and regulations, and differed from the version installed on



KC-46A, all in defiance of Boeing's own historical practices and Boeing engineers' warnings;

- secretly expanded the MCAS's operating conditions to control the aircraft in both low- and high-speed environments;
- secretly expanded the MCAS's authority to move the aircraft's tail by more than 300%;
- did not disclose necessary and relevant information about the MCAS's expansion to the Flight Technical Team, including Mr. Forkner, who was principally responsible for providing all information that was relevant to the FAA AEG for determining differences-training;
- wrongfully induced and/or misled (in Boeing's words, "Jedi-mind tricked") regulators into deleting references to the MCAS in the flight operating manuals and wrongfully induced and/or misled customers into believing that additional simulator piloting training was not necessary (for example, specifying in purchase agreements that only DVD-based "differences training" would be provided for 737-NG qualified pilots); and
- removed an indicator light for MCAS failure to avoid further pilot training.

131. These MCAS alterations were, upon information and belief, developed in 2015 based on testing and analyses that occurred between approximately 2012-2014. Exhibit 3 at 13-17. Thus, upon information and belief, Boeing knew at least as early as 2012 to early 2014 that an expansion of MCAS was required and that utilization of MCAS made false Boeing's promise to deliver 20 aircraft to Timaero that would require only Level B non-simulator training. Upon information and belief, Boeing knew its promises to Timaero were false and never intended to fulfill them when Timaero executed the Purchase Agreement.

132. In or around June 2015, Mr. Forkner and other Boeing employees briefed the FAA AEG on MCAS. During this briefing, Boeing described MCAS as a system that could only activate during a high-speed, wind-up turn. After the briefing, Mr. Forkner and another Boeing employee further discussed MCAS with an FAA AEG employee ("FAA

1 AEG Employee-1”) and reiterated to FAA AEG Employee-1 the limited operational scope  
2 of MCAS. DPA-A ¶ 24.

3 133. Upon information and belief, at this time Boeing was actively altering  
4 MCAS to expand its use based on testing and analysis that occurred between approximately  
5 2012-2014.

6 134. Subsequently, in March 2016, Boeing expanded MCAS’s operational scope,  
7 including the speed range within which MCAS could activate, significantly altering its  
8 original design. Among other things, when the airplane registered a high angle of attack,  
9 the change expanded the speed range within which MCAS could activate from  
10 approximately Mach 0.6-0.8 to approximately Mach 0.2-0.8—that is, from only high-speed  
11 flight to nearly the entire speed range for the 737 MAX, including low-speed flight, which  
12 generally occurs at a lower altitude and in and around takeoff and landing. Boeing disclosed  
13 this expansion to FAA personnel, but only to those personnel who were responsible for  
14 determining whether the 737 MAX met U.S. federal airworthiness standards. **Boeing did**  
15 **not disclose the expansion to the FAA AEG personnel responsible for publishing the**  
16 **737 MAX FSB Report and making the training-related determination.** DPA-A ¶ 25.

17 135. Throughout the time that Boeing was implementing and modifying MCAS,  
18 Boeing made dozens of filings with EASA for supplemental type certificates on 737 series  
19 planes related to, e.g.: in flight entertainment systems; seat belts; a cargo door latch; a WiFi  
20 upgrade; cabin reconfigurations; a coffee maker; and a vacuum toilet. Not once in EASA’s  
21 log of Supplemental Type Certificates does there appear an STC for changes to 737-MAX  
22 or 737-8 flight controls. **Boeing did not disclose MCAS, or its defects, to EASA.**

1           136. David Loffing, a Boeing executive and director of the Airplane Level  
2 Integration Team, was responsible for “integration,” i.e., making sure the engineering  
3 department sent all relevant information to the Flight Technical Team, including Mr.  
4 Forkner, so that such information was provided to the FAA AEG.  
5

6           137. However, the engineering department, under Mr. Loffing’s management, did  
7 not update documents to communicate the MCAS’s expansion to low speeds to the  
8 Technical Flight Team or the FAA.

9           138. Boeing utilizes Coordination (“COORD”) Sheets as the primary method for  
10 the engineering department to communicate changes of the aircraft to other departments.  
11 The engineering department documented and communicated the MCAS’s expansion to  
12 low-speed flight in a COORD Sheet dated March 30, 2016. The engineering department  
13 never sent this March 30, 2016 COORD Sheet to Mr. Forkner.  
14

15           139. The MCAS’s expansion was also not updated in the Crews System Interface  
16 Document (“CSID”). This document is produced by the engineering department to  
17 communicate and help support creating the systems’ descriptions in the flight crew training  
18 manuals and FCOM, and used by the Flight Technical Group. Mr. Forkner received a CSID  
19 eight days before the MCAS’s expansion, which stated that it only operated at high-speed  
20 pitch up, load factor 1.3 G, which is not at low-speed. In August 2016 and March 2019, Mr.  
21 Forkner received additional CSIDs from the engineering department, which also described  
22 the MCAS as operating only at high-speeds.  
23

24           140. After the engineering department expanded the MCAS to operate at low  
25 speeds, Mr. Loffing and his engineering group made three reports to the FAA that  
26 inaccurately described the MCAS as operating only at high-speed, wind-up turns.

1           141. As a result of a Boeing internal investigation after the Lion Air crash, Mr.  
2 Loffing described the documents above, and others, as incomplete and inconsistent.

3           142. Not a single official Boeing document, email, or documented  
4 communication shows that Mr. Forkner was informed of the MCAS's expansion so that he  
5 could communicate it to the FAA.  
6

7           143. Mr. Loffing alleges that Mr. Forkner called him sometime between  
8 November 2016 and January 2017. During this undocumented telephone call Mr. Loffing  
9 alleges that he told Mr. Forkner that MCAS was expanded to operate at low speeds down  
10 to Mach 0.2. There are no records of this telephone conversation occurring and such a  
11 telephone conversation is not Boeing's primary means for communicating engineering  
12 changes of an aircraft to other departments, such as the Flight Technical Team.  
13

14           144. After the alleged telephone conversation between Mr. Loffing and Mr.  
15 Forkner, Mr. Loffing (as the executive in charge of integration) did nothing to address the  
16 issue that his Chief Technical Pilot did not know about the expanded operational scope of  
17 MCAS. For example, the Mr. Loffing did not call any meetings, did not call Mr. Forkner's  
18 boss, did not call up his boss (Mr. Leverkus, Vice President and General Manager of the  
19 737 MAX Program), did not call anyone in the engineering department, did not call any test  
20 pilots, did not send the relevant COORD Sheet or any documents regarding the MCAS's  
21 expansion to Mr. Forkner, did not ensure MCAS's expansion was communicated to the  
22 FAA AEG, and did not conduct any follow-ups with Mr. Forkner.  
23

24           145. Upon information and belief, FAA officials have stated that the problems  
25 with MCAS were caused by a failure of Boeing's engineering department and the  
26 engineering certification under 14 CFR Part 25.

1           146. Furthermore, in or around January 2016, Boeing completed a Single and  
2 Multiple Failure document for the 737 MAX. Exhibit 3 at 18. Boeing considered this failure  
3 probability analysis an internal document only and did not submit it as a required  
4 certification deliverable. Boeing did not provide it to FAA. According to FAA, some aspects  
5 of Boeing's analysis from the Single and Multiple Failure document should have been  
6 included in system safety assessments later provided to the Agency as certification  
7 deliverables.

8  
9           147. Boeing's analysis identified 75 failure cases to assess the potential impacts  
10 of those failure scenarios on the aircraft and flight crew. Boeing's Single and Multiple  
11 Failure analysis found all 75 potential failure cases to be acceptable.

12  
13           148. One potential failure case involved the loss of one AOA sensor—an external  
14 sensor that measures the angle of the aircraft in the air—followed by faulty AOA data in  
15 the other sensor. (*See* figure 8, which shows the location of AOA on the 737 MAX aircraft.)

16           149. However, despite identifying this failure case and deeming it catastrophic,  
17 Boeing determined this failure case was acceptable because the probability of occurrence  
18 was determined to be extremely remote, and it was assumed the crew would recognize the  
19 situation and take appropriate action. While this failure test case may not be exactly the  
20 same as the circumstances encountered in the Lion and Ethiopian Air accidents, erroneous  
21 AOA data—potentially caused by the failure of one AOA sensor—was a factor present in  
22 both accident scenarios. Exhibit 3 at 19.

1           150. During its Single and Multiple Failure analysis, Boeing rated this potential  
 2 failure case as “catastrophic”<sup>43</sup> but also determined that the low probability of occurrence  
 3 meant it qualified as acceptable. Boeing also rated 11 other potential failure cases as  
 4 catastrophic but ultimately deemed them acceptable based on probability and engineering  
 5 judgement.  
 6

7           151. Boeing’s 737 MAX 8 flight testing began in January 2016. Exhibit 3 at 20.

8           152. By at least March 30, 2016, Boeing completed MCAS “Revision D,” which  
 9 changed the parameters under which MCAS would activate to include the much slower  
 10 airspeeds. Exhibit 3 at 20-21. It also increased the maximum range of MCAS from 0.55-  
 11 degrees to 2.5-degrees, an increase of over 300 percent.<sup>44</sup> This meant that each time MCAS  
 12 activated, it could push the nose of the aircraft downward with a maximum range of 2.5-  
 13 degrees of movement.<sup>45</sup>  
 14

15           153. Following Revision D, MCAS could now activate at speeds of 0.2 to 0.84  
 16 Mach, whereas it could previously only activate at speeds above 0.60 Mach.<sup>46</sup>

17           154. Upon information and belief, the information that led to the decision to  
 18 design and implement Revision D was known to Boeing prior to and/or near in time to  
 19

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20  
 21           <sup>43</sup> FAA Advisory Circular 25.1309.1A classifies risk ratings as: Minor (failure  
 22 conditions which would not significantly reduce airplane safety and which involve crew  
 23 actions that are well within their capabilities), Major (failure conditions which would  
 24 reduce the capability of the airplane or the ability of the crew to cope with adverse  
 conditions), Hazardous (failure conditions which would reduce the capability of the  
 airplane or the ability of the crew to cope due to physical distress or excessive workload),  
 and Catastrophic (failure conditions which would prevent continued safe flight and  
 landing).

25           <sup>44</sup> *Id.*

26           <sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 20 n.35.

1 Timaeo's execution of the Purchase Agreement following testing and analyses conducted  
2 during approximately 2012-2014 and following software developments during 2015. Thus,  
3 upon information and belief, Boeing knew that an expansion of MCAS was required prior  
4 to and/or near in time to Timaeo's execution of the Purchase Agreement.  
5

6 155. In a rush to fix known problems, Boeing decided to expand the use of MCAS  
7 to lower-speed situations, including during takeoff. Boeing also allowed the tail stabilizer  
8 to move up to 2.5-degrees in 10 seconds, over 4 times faster than previously designed.<sup>47</sup>  
9 This allowed MCAS to work at lower speeds where additional movement of the horizontal  
10 stabilizer is required to steer. Maximum nose down of the horizontal stabilizer could now  
11 be achieved in only two iterations of MCAS activation.  
12

13 156. Boeing also removed the G-force threshold for activating MCAS, causing it  
14 to be triggered by only the single angle-of-attack ("AOA") sensor. As originally designed,  
15 MCAS relied on both an Angle of Attack ("AOA") vane and a G-Force meter for this  
16 purpose so that it would activate only when the AOA vane and the G-force meter both  
17 sensed an impending high-G stall.<sup>48</sup> To make MCAS activate during low-G maneuvers,  
18 Boeing eliminated MCAS's dependence on a G-force meter and left it completely  
19 dependent on the AOA vane as the single source of information about when MCAS should  
20 aggressively push the nose down.  
21

22  
23 <sup>47</sup> Jack Nicas, David Gelles, and James Glanz, "Changes to Flight Software on 737  
24 Max Escaped F.A.A. Scrutiny," New York Times Apr. 11, 2019,  
<https://www.nytimes.com/2019/04/11/business/boeing-faa-mcas.html>.

25 <sup>48</sup> Dominic Gates and Mike Baker, "The inside story of MCAS: How Boeing's 737  
26 MAX system gained power and lost safeguards," Seattle Times, June 22, 2019,  
<https://www.seattletimes.com/seattle-news/times-watchdog/the-inside-story-of-mcas-how-boeings-737-max-system-gained-power-and-lost-safeguards/>.

157. When they work, AOA vanes provide a direct reading of when an aircraft is nearing or entering a stall – but they are prone to malfunction. Despite the fact that the 737 MAX has two AOA vanes, Boeing designed MCAS to rely on only one of the AOA vanes during flight.<sup>49</sup> Also, Boeing failed to include self-diagnostic software in MCAS that would have allowed it to detect and deactivate an obviously malfunctioning AOA vane.<sup>50</sup> Finally, Boeing programmed MCAS so that it reset itself five seconds after every application of pitch-down stabilizer trim – and never stopped as long as MCAS believed the aircraft was close to stalling.<sup>51</sup> Thus, a system that should have had triple-redundancy was designed by Boeing to rely on a single prone-to-failure sensor with no redundancy whatsoever.

158. Boeing employees recognized the danger of changing MCAS to rely on a single AOA sensor that could malfunction. Boeing considered adding a cockpit alert that would tell pilots when MCAS was engaged, but ultimately decided not to include the alert.<sup>52</sup> In 2015, an engineer raised concerns that the system was vulnerable to malfunctioning because it relied on a single sensor, but those concerns were ignored.<sup>53</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> The recklessness of this flaw is apparent from the Ethiopian Air crash, where the broken AOA sensor was reporting an angle of attack of 75 degrees or more and MCAS was not programmed to recognize that it is physically impossible for a MAX to have an angle of attack of more than approximately 20 degrees.

<sup>51</sup> Dominic Gates, “Flawed analysis, failed oversight: How Boeing, FAA certified the suspect 737 MAX flight control system,” *Seattle Times*, Mar. 17, 2019, <https://www.seattletimes.com/business/boeing-aerospace/failed-certification-faa-missed-safety-issues-in-the-737-max-system-implicated-in-the-lion-air-crash/>.

<sup>52</sup> David Gelles and Natalie Kitroeff, “Documents Show Safety Concerns at Boeing Before Deadly Crashes,” *New York Times*, Oct. 30, 2019, <https://www.nytimes.com/2019/10/30/business/boeing-muilenburg-testimony-congress.html>.

<sup>53</sup> *Id.*



1           159. Thus, Boeing knowingly deviated from its initial MCAS design utilizing two  
2 AOA sensors as a safeguard—despite Boeing’s design requirements and despite Boeing  
3 representing to the FAA that an AOA Disagree Alert with two AOA sensors to sense a  
4 malfunctioning AOA sensor would be a standard, non-optional feature. Boeing failed to  
5 inform the FAA or Timaeo that the aircraft did not conform to the approved design.  
6

7           160. By at least March 2016, Boeing also chose not to notify pilots that the MCAS  
8 was operating on the 737 MAX. Boeing chose to remove MCAS from the flight crew  
9 operations manual (FCOM), which is the master description of the aircraft for pilots.

10           161. Mark Forkner sent a March 30, 2016 email to senior FAA officials  
11 requesting to remove MCAS from the pilot’s manual. Boeing never reported that MCAS  
12 had been redesigned to operate at lower flight speeds to the FAA. Instead, FAA officials  
13 had only been informed regarding the original version of MCAS, represented by Boeing to  
14 be benign. Relying on Boeing, the FAA approved Boeing’s request.  
15

16           162. A report of the Joint Authorities Technical Review Board dated October 11,  
17 2019 (“Joint Report”) found that Boeing, beginning in March 2016, was reporting  
18 “information and discussions about MCAS...[in] fragment[s] [that] were delivered to  
19 disconnected groups within the process.” Exhibit 4 at 13-14.<sup>54</sup> Importantly, Boeing  
20 purposely started this practice after it made changes to the original MCAS design in “early  
21 2016”, as discussed above, to prevent the FAA from realizing the flight control was different  
22

23  
24 <sup>54</sup> Joint Authorities Technical Review (JATR), Boeing 737 MAX Flight Control  
System: Observations, Findings, and

25 Recommendations. Submitted to the Associate Administrator for Aviation Safety,  
26 U.S. Federal Aviation Administration on October 11, 2019,  
[https://www.faa.gov/news/media/attachments/Final\\_JATR\\_Submittal\\_to\\_FAA\\_Oct\\_2019.pdf](https://www.faa.gov/news/media/attachments/Final_JATR_Submittal_to_FAA_Oct_2019.pdf).

1 and novel. (*Id.* at 13-14, 47.) The Joint Report concluded that “it was difficult [for the FAA]  
2 to recognize the impacts and implications of this system. If the FAA technical staff had been  
3 fully aware of the details of MCAS function, the JATR team believes the agency likely  
4 would have required an issue paper...” *Id.* at 13-14.

5  
6 163. Boeing knew that the tail stabilizer limit of 2.5-degrees was higher than the  
7 original 0.6-degree limit specified in the original safety analysis, and that it was not  
8 designed or intended to be used at lower speeds, including during takeoff.

9  
10 164. On or about August 15, 2016, Boeing released the version of the flight  
11 control computer software that it intended to use as the final version on the 737 MAX. This  
12 software revision included the version of MCAS that had the ability to push down the nose  
13 of the aircraft with a maximum movement of 2.5-degrees. Exhibit 3 at 22.

14  
15 165. On or about August 16, 2016, the FAA AEG issued a provisional “Level B”  
16 differences-training determination for the 737 MAX. At the time of this provisional  
17 determination, Boeing did not disclose to the FAA AEG, nor was the FAA AEG aware, that  
18 Boeing had expanded MCAS’s operational scope. DPA-A ¶ 26.

19  
20 166. On or about the same day, Mr. Forkner recognized Boeing’s achievement in  
21 an email to Boeing employees, including Mr. Gustavsson, and wrote that the FAA AEG’s  
22 provisional determination “culminates more than 3 years of tireless and collaborative efforts  
23 across many business units” and that the 737 MAX program management “is VERY  
24 happy.” DPA-A ¶ 27.

25  
26 167. As Mr. Forkner and Mr. Gustavsson knew, the FAA AEG based its  
provisional “Level B” differences training for the 737 MAX in part on its understanding

1 that MCAS could only activate during the limited operational scope of a high-speed, wind  
2 up turn. DPA-A ¶ 28.

3 168. Mr. Forkner and Mr. Gustavsson also understood, as Mr. Forkner  
4 acknowledged in his email on or about August 16, 2016, that the FAA AEG’s “Level B”  
5 differences determination for the 737 MAX was only a “provisional approval [. . .] assuming  
6 no significant systems changes to the airplane.” DPA-A ¶ 29.

7 169. For example, in an email to Boeing employees including Mr. Gustavsson  
8 discussing a potential change to another part of the 737 MAX’s flight controls on or about  
9 November 10, 2016, Mr. Forkner emphasized that “[o]ne of the Program Directives we  
10 were given was to not create any differences [. . .]. This is what we sold to the regulators  
11 who have already granted us the Level B differences determination. To go back to them  
12 now, and tell them there is in fact a difference [. . .] would be a huge threat to that differences  
13 training determination.” DPA-A ¶ 30.

#### 14 **I. Boeing’s MCAS Design is Deeply Flawed and Defective**

15 170. Boeing’s development and testing of MCAS was deeply flawed. As  
16 described herein, MCAS’s power had to be increased by a factor of four. There are  
17 indications that Boeing recognized it was too powerful and made the 737 MAX difficult to  
18 control. In November 2016, for example, a Boeing technical pilot complained in an internal  
19 message that the system was “running rampant” during flight simulator operation. He also  
20 wrote—in a tragic preview of the two fatal MAX crashes—that “the plane is trimming itself  
21 like cra[z]y [sic].”<sup>55</sup>

22  
23  
24  
25  
26 <sup>55</sup> Boeing claims that these comments pertain to an unrelated problem with simulator software, but has not produced evidence to support this claim.

171. In order to meet certification requirements, Boeing is required to conduct a “System Safety Analysis” of any new system added to the cockpit and report the results to the FAA. As part of this analysis, Boeing must give one of four rankings to each potential failure mode for the new system: minor, major, hazardous, and catastrophic. “Catastrophic” is defined as a failure that is likely to result in “multiple fatalities and/or loss of the [aircraft].” “Hazardous” is defined as a failure that is likely to result in “serious or fatal injury to a small number of occupants of aircraft (except operator),” and “Major” is defined as a failure that causes “physical distress to occupants of aircraft” but no serious or fatal injuries. If a given system failure is ranked as “catastrophic” or “hazardous,” Boeing must show that multiple redundancies or other features make the failure of that system virtually impossible.

172. Boeing’s System Safety Analysis for MCAS was dangerously inadequate. Major portions of the System Safety Analysis did not even reevaluate the final version of MCAS – they instead evaluated the previous version, the version used before Boeing increased MCAS’s power by a factor of four.<sup>56</sup> In addition, Boeing failed to evaluate the fact that a false reading by the single AOA sensor that drove MCAS would not only aggressively push the aircraft’s nose down for no apparent reason—it would also set off multiple alarms and cause multiple cockpit instruments to display inaccurate or inconsistent data on critical items such as altitude and airspeed.<sup>57</sup> This meant that pilots would need to

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<sup>56</sup> Dominic Gates and Mike Baker, “The inside story of MCAS: How Boeing’s 737 MAX system gained power and lost safeguards” Seattle Times, June 24, 2019, <https://www.seattletimes.com/seattle-news/times-watchdog/the-inside-story-of-mcas-how-boeings-737-max-system-gained-power-and-lost-safeguards/>.

<sup>57</sup> Dominic Gates, “Flawed analysis, failed oversight: How Boeing, FAA certified the suspect 737 MAX flight control system,” Seattle Times, Mar. 17, 2019,

1 deal with these alarms and misleading data at the same time they were fighting MCAS for  
2 control of the aircraft.

3 173. Boeing represented to the FAA that if MCAS malfunctioned and  
4 commanded nose down trim when the aircraft was not near a stall, MCAS could easily be  
5 countermanded or shut off by the pilots via a cutoff switch in the cockpit. They could then,  
6 Boeing claimed, safely fly the aircraft using the manual trim wheel that remained in the 737  
7 MAX as a vestige of the original 1967 design. Boeing did not disclose, however, that this  
8 conclusion failed to account for MCAS's increased power and the increased trim wheel  
9 forces resulting from the 737 MAX's substantially higher weight and thrust.<sup>58</sup> Boeing also  
10 did not evaluate the other changes it made to other MCAS-related cockpit controls that  
11 made it difficult for pilots to recognize and counteract a malfunctioning MCAS's aggressive  
12 pitch-down commands. Boeing also did not disclose that a MCAS malfunction that occurred  
13 while the aircraft was traveling at normal climb or cruise speed would be substantially more  
14 dangerous than an MCAS malfunction that occurred at low airspeeds where MCAS was  
15 designed to operate.<sup>59</sup> Finally, Boeing's safety analysis failed to account for the fact that if  
16 the single AOA sensor failed, MCAS would continue to reset itself and attempt to force the  
17 nose down every fifteen seconds, and that this aspect of MCAS could put the aircraft into a  
18 dive so steep that recovery would be impossible.

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22  
23 <https://www.seattletimes.com/business/boeing-aerospace/failed-certification-faa-missed-safety-issues-in-the-737-max-system-implicated-in-the-lion-air-crash/>.

24 <sup>58</sup> *Id.*

25 <sup>59</sup> This is because the amount of force needed to move an aircraft's control surfaces  
26 increases by the square of the airspeed, meaning that if MCAS malfunctioned and pushed the nose down during normal flight, the pilots would have to pull approximately four times harder on the controls to counteract this as they would at low speed.

1           174. Relying on this deeply flawed analysis, Boeing falsely reported to the FAA  
2 that an MCAS failure should be ranked as “major” but not “hazardous” or “catastrophic.”  
3 In other words, Boeing represented to the FAA and other regulators that a malfunctioning  
4 MCAS would cause “physical distress to occupants of aircraft,” but not “multiple fatalities  
5 and/or loss of the [aircraft].” A proper System Safety Analysis would have made clear that  
6 Boeing needed to eliminate MCAS entirely, or at the very least rank MCAS failures as  
7 “catastrophic” and design MCAS very differently to eliminate any significant risk that it  
8 could force an aircraft into an unrecoverable dive.  
9

10           175. In addition, Boeing successfully lobbied the FAA to waive requirements to  
11 add certain cockpit alerts or indicators that would have been required if the 737 MAX were  
12 an all-new aircraft. Boeing argued that the costs of adding new indicators and alerts were  
13 too high and that such alerts were “impractical” to add to the 50-year-old design of the 737  
14 MAX.<sup>60</sup>  
15

16           176. Boeing did not perform an additional safety analysis or inform the FAA of  
17 its changes to the MCAS design. Boeing never informed the FAA or its customers,  
18 including Timaero, of the expansion of MCAS’s authority in low-speed situations. Boeing  
19 also did not inform the FAA or its customers, including Timaero, that MCAS’s control was  
20 expanded to move the tail stabilizer from 0.6 to 2.5 degrees in 10 seconds, that MCAS could  
21 be triggered successively, or that MCAS would be triggered by only a single angle-of-attack  
22 sensor.  
23

24  
25           <sup>60</sup> Dominic Gates, Steve Miletech, Lewis Kamb, “Boeing pushed FAA to relax 737  
26 MAX certification requirements for crew alerts” Seattle Times, Oct. 3, 2019,  
<https://www.seattletimes.com/business/boeing-aerospace/boeing-pushed-faa-to-relax-737-max-certification-requirements-for-crew-alerts/>.

1           177. Boeing knew that the tail stabilizer limit of 2.5-degrees was higher than the  
2 original 0.6-degree limit specified in the original safety analysis, and that it was not  
3 designed or intended to be used at lower speeds, including during takeoff. Boeing also knew  
4 or should have known that safety analyses are required to be updated to reflect the most  
5 accurate aircraft information following flight tests. However, Boeing's final safety analysis  
6 was not updated to reflect the updated 2.5-degree limit and still contained the 0.6-degree  
7 limit, and was not updated with its new function to operate at lower flight speeds.

8  
9           178. Timaro would not have purchased any 737 MAX aircraft had Boeing  
10 disclosed the information in Boeing's possession and control concerning MCAS identified  
11 above.

12  
13           179. Boeing also knew of the fatal flaws of its MCAS and the danger of untrained  
14 pilots. As referenced above, in 2016, the chief technical pilot for the 737 MAX told a  
15 colleague in a text that MCAS was "running rampant" and was "egregious" in a simulator.  
16 Exhibit 7 at 1-2. A June 2018 Boeing document stated that if a pilot took more than ten  
17 seconds to react to mistaken MCAS activation, the result could be "catastrophic."<sup>61</sup>

18           180. As a further example, MCAS relies on a single angle-of-attack sensor,  
19 though there are two such sensors on the plane. If the angle-of-attack sensor is damaged,  
20 faulty, or provides corrupt data, MCAS can force the 737 MAX into an unrecoverable dive  
21 due to this single point of failure. Moreover, use of a single angle-of-attack sensor is another  
22

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26           <sup>61</sup> Alec MacGillis, The Case Against Boeing, THE NEW YORKER (Nov. 11, 2019),  
<https://www.newyorker.com/magazine/2019/11/18/the-case-against-boeing>.

1 way that MCAS, as used on the 737 MAX, differed than KC-46A, which previously utilized  
2 MCAS.

3 181. Boeing's own employees warned of the dangers of a single point of failure.  
4 In 2014, Boeing's Chief Test Pilot, Ray Craig, and engineer, Curtis Ewbank, urged Boeing  
5 to implement a backup system to detect malfunctioning AOA sensors. According to an  
6 ethics complaint Ewbank filed with Boeing, however, Ewbank's request for a safety check  
7 was rejected twice by senior executives because of the "cost and potential (pilot) training  
8 impact."<sup>62</sup> In 2015, a Boeing employee asked in an e-mail, "Are we vulnerable to single  
9 AOA sensor failures with the MCAS implementation or is there some checking that  
10 occurs?."<sup>63</sup> Despite this knowledge, Boeing failed to enable a second, already existing,  
11 angle-of-attack sensor for use by the MCAS. Boeing also made an alert system, which  
12 would detect and notify flight crew of any inconsistencies between the two angle of attack  
13 sensors, an optional add-on feature at an additional cost. During the Senate Commerce,  
14 Science, and Transportation Committee hearing held on October 29, 2019, Boeing's CEO,  
15 Dennis Muilenburg, admitted that as Boeing's own personnel had warned since 2014,  
16 Boeing should not have designed MCAS to have only one AOA sensor.  
17

18 182. Boeing could have easily designed the system to compare the readings from  
19 two or more angle-of-attack sensors, but instead, MCAS was designed to take a reading  
20  
21

22  
23 <sup>62</sup> Natalie Kitroeff et al. Boeing 737 Max Safety System Was Vetoed, Engineer  
24 Says, NEW YORK TIMES, (October 2, 2019),  
25 [https://www.nytimes.com/2019/10/02/business/boeing-737-max-](https://www.nytimes.com/2019/10/02/business/boeing-737-max-crashes.html?action=click&module=Top%20Stories&pgtype=Homepage)  
crashes.html?action=click&module=Top%20Stories&pgtype=Homepage.

26 <sup>63</sup> David Schaper, 3 Takeaways From 2 Days Of Tense Boeing Congressional  
Hearings, NPR (November 2, 2019), [https://www.npr.org/2019/11/02/775553377/3-](https://www.npr.org/2019/11/02/775553377/3-takeaways-from-2-days-of-tense-boeing-congressional-hearings)  
takeaways-from-2-days-of-tense-boeing-congressional-hearings.



1 from only one of them. By way of example, Airbus considers AOA sensors to be “safety  
2 critical” and installs three sensors on the A320neo. Boeing could have also easily designed  
3 a system-check to ensure the angle-of-attack sensor was reading accurately, e.g., ensure the  
4 sensor was reading zero on the ground prior to takeoff. However, Boeing did not design or  
5 integrate any measures to ensure the MCAS would only activate in response to an accurate  
6 reading.  
7

8 183. Boeing knew or should have known that MCAS’s reliance on a single angle-  
9 of-attack sensor is reckless or negligent, and would lead to catastrophe.

10 184. As a further example, previous versions of the 737 cut electric power to a  
11 horizontal stabilizer if a pilot placed resistance against the control column in the opposite  
12 direction of the stabilizer’s movement. However, when MCAS is activated, this feature is  
13 disabled on the 737 MAX.  
14

15 185. Boeing knew or should have known that disabling this feature when MCAS  
16 is enabled is reckless or negligent, and would lead to catastrophe.

17 186. As a further example, while activating electric trim control on the yoke may  
18 temporarily stop the MCAS’s movement of the tail’s horizontal stabilizer, the MCAS will  
19 reactivate after a few seconds and continue to force the nose down if the angle-of-attack is  
20 still sensed as being too high. In other words, the MCAS will trigger a movement of the  
21 horizontal stabilizer multiple times in rapid succession. Two cycles of MCAS activation are  
22 enough to achieve maximum nose-down effect.  
23

24 187. Boeing knew or should have known that repeated triggering of MCAS is  
25 reckless or negligent, and would lead to catastrophe.  
26

188. Notably, the earlier KC-46A's MCAS had none of these flaws. It relied on multiple sensor inputs, had limited authority to move the tanker's nose, and only activated the horizontal stabilizer once, not repeatedly.<sup>64</sup> Pilots of the tanker can also override MCAS by simply pulling back on controls.<sup>65</sup>

**J. Timaero and Boeing Execute Supplemental Agreement No. 1**

189. On September 15, 2016, Timaero and Boeing entered Supplemental Agreement No. 1, wherein the parties agreed to convert two (2) Boeing 737-800 aircraft from a prior purchase agreement into two (2) Boeing 737 MAX aircraft. Supplemental Agreement No. 1 was an amendment to and was incorporated into the Purchase Agreement. Supplemental Agreement No. 1 provided that "[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect." Therefore, Timaero purchased a total of twenty-two (22) 737 MAX aircraft from Boeing under the Purchase Agreement.

190. Boeing did not disclose to Timaero prior to execution of Supplemental Agreement No. 1 in September 2016 (1) of MCAS's expanded use, (2) that Boeing had withheld disclosure of MCAS's expanded use from the FAA, (3) that MCAS's use on the 737 MAX was new and novel as to the 737 MAX aircraft, (4) that MCAS's use on the 737 MAX would jeopardize a Level B differences training determination by the FAA, (5) that MCAS installed on KC-46A materially differed from the version of MCAS installed on the

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<sup>64</sup> Alison Sider and Andrew Tangel, Before 737 MAX, Boeing's Flight-Control System Included Key Safeguards, THE WALL STREET JOURNAL (Sept. 29, 2019), <https://www.wsj.com/articles/before-737-max-boeings-flight-control-system-included-key-safeguards-11569754800>.

<sup>65</sup> *Id.*

1 737 MAX, and (6) that MCAS on the 737 MAX controlled the aircraft's movement in a  
2 new way. To the contrary, Boeing misrepresented in Supplemental Agreement No. 1 that  
3 the 737 MAX would only require Level B differences training. Timaero relied on Boeing's  
4 misrepresentations in executing Supplemental Agreement No. 1. Had Boeing disclosed the  
5 truth about MCAS to Timaero it would not have executed Supplemental Agreement No. 1.  
6

7 191. Indeed, as explained herein, Boeing secretly expanded MCAS's use six  
8 months prior to execution of Supplemental Agreement No. 1, on March 30, 2016, pursuant  
9 to Revision D. For the reasons stated herein, Boeing knew that the expansion of MCAS's  
10 use on March 30, 2016, and the version of MCAS released on August 15, 2016 precluded  
11 Level B non-simulator training in all 22 of the 737 MAX aircraft that were to be delivered  
12 to Timaero under the Purchase Agreement. Boeing thus knew at least as early as March 30,  
13 2016 and/or August 15, 2016 that it could not deliver aircraft to Timaero that only required  
14 Level B non-simulator training. Nevertheless, Boeing represented as of September 15, 2016  
15 in Supplemental Agreement No. 1 that "all other terms and conditions of the [2014]  
16 Purchase Agreement," including the promise of delivering 20 aircraft that require only  
17 Level B non-simulator training, "remain unchanged and [] in full force and effect." Boeing  
18 knew that its representation was not true and that its promise to deliver 20 aircraft from the  
19 2014 Purchase Agreement and the 2 aircraft from Supplemental Agreement No. 1 with only  
20 Level B non-simulator training would not be fulfilled. Boeing never intended that its  
21 promises would be fulfilled. Timaero relied on Boeing's misrepresentation that "all [] terms  
22 and conditions of the [2014] Purchase Agreement remain unchanged and are in full force  
23 and effect" in executing Supplemental Agreement No. 1. Timaero would not have entered  
24  
25  
26

1 into Supplemental Agreement No. 1 had Boeing disclosed the information concerning  
2 MCAS detailed above.

3 **K. Boeing Knowingly Mischaracterizes a Catastrophic Failure Scenario Related**  
4 **to the 737 MAX**

5 192. Boeing also performed a failure analysis for MCAS, during which failure  
6 scenarios are determined to be either minor, major, hazardous, or catastrophic. The scenario  
7 categorization helps determine the redundancy for an aircraft system. For major failures, no  
8 serious injuries are expected, though flight crew may have additional tasks or complexities.  
9 Hazardous failures can cause serious and fatal injuries and require multiple sensors if there  
10 is a high probability of occurrence during normal flight. Loss of the aircraft is reserved for  
11 catastrophic failures.  
12

13 193. Aviation regulations require that safety-critical components have built-in  
14 redundancies in case of failure to prevent crashes. In or around November 10, 2016, Boeing  
15 purposely and/or recklessly determined that an “unintended MCAS activation” during  
16 regular flight would be a major event, but unlikely to happen. Exhibit 3 at 25. As a result,  
17 Boeing categorized this MCAS failure as major (not catastrophic). However, MCAS did  
18 not meet the requirements for a system with a major or hazardous failure rating as it  
19 depended on the reading from a single angle-of-attack sensor without any redundant input  
20 or check. Boeing’s failure analysis did not consider the effect of multiple actuations of the  
21 MCAS. Boeing’s analysis also assumed that pilots would react quickly and properly if  
22 failure arose.  
23  
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26

194. Boeing knew or should have known an MCAS failure should have been categorized as catastrophic as a failure was likely to result in injuries and deaths, and thereby had to include the necessary checks and redundancies.

195. According to a former Boeing flight-controls engineer, “The combination of air data, stall warning and MCAS persistent malfunction should have been declared CATASTROPHIC.”<sup>66</sup> Further, the Joint Report, concluded that Boeing’s assumptions it took to make an MCAS malfunction a “major failure” were “not [] standard [in the] industry.” Exhibit 6 at 17. The Joint Report also found that Boeing failed to perform a complete workload assessment, and its design and analysis did not account for real cockpit conditions. In addition, the Joint Report found that “MCAS was not assess[ed]” for compliance with regulatory Section 25.1302,<sup>67</sup> while Boeing represented that it was.

196. Upon information and belief, FAA officials have stated that the MCAS’s reliance on a single AOA sensor is not in compliance with Section 25.1302.

**L. Boeing Concealed MCAS’s Expanded Use from Regulators and Customers, Including Timaero**

197. Communications released by Boeing show that Boeing’s Chief Technical Pilot, Mark Forkner, knew that MCAS was active at low speed and low Mach conditions (“M.2”), despite his previous statements to the FAA to the contrary, after the 737 MAX exhibited the pitch-up problem described above during low-speed, low-G maneuvers.<sup>68</sup>

<sup>66</sup> Peter Lemme, Flawed Assumption Pave a Path to Disaster, Satcom Guru (October 28, 2019) <https://www.satcom.guru/2019/10/flawed-assumptions-pave-path-to-disaster.html>.

<sup>67</sup> 14 CFR § 25.1302 requires an applicant to show that the aircraft’s systems are “designed so that qualified flightcrew members trained in their use can safely perform all the tasks associated with the systems’ and equipment’s intended functions.”

<sup>68</sup> Dominic Gates and Mike Baker, “The inside story of MCAS: How Boeing’s 737 MAX system gained power and lost safeguards,” Seattle Times, June 22, 2019,

198. On or about November 15, 2016, during a test flight of the 737 MAX in a simulator, Mr. Forkner experienced what Mr. Forkner recognized as MCAS operating at lower speed. Mr. Forkner further recognized that this lower-speed operation was different from what Boeing had briefed and described to the FAA AEG. DPA-A ¶ 31.

199. On or about that same day, Mr. Forkner and Mr. Gustavsson discussed MCAS in an internal Boeing electronic chat communication, writing in part:

Mr. Forkner: Oh shocker alerT! [sic] / MCAS is now active down to [Mach] .2 / It's running rampant in the sim on me / at least that's what [a Boeing simulator engineer] thinks is happening

Mr. Gustavsson: Oh great, that means we have to update the speed trim description in vol 2

Mr. Forkner: so I basically lied to the regulators (unknowingly)

Mr. Gustavsson: it wasn't a lie, no one told us that was the case

DPA-A ¶ 32.

200. In response to Mr. Forkner's "shocker alerT!" Technical Pilot Patrick Gustavsson, responded, stating that he experienced the same "egregious" behavior, "but on approach." *Id.* at 1-2.

201. However, Boeing never updated the FAA, and failed to inform the FAA or Timaro of its significant changes to MCAS. Rather, Forkner, who was Boeing's liaison with the FAA, was pressured by Boeing senior management to do whatever was necessary

<https://www.seattletimes.com/seattle-news/times-watchdog/the-inside-story-of-mcas-how-boeings-737-max-system-gained-power-and-lost-safeguards/>.

1 to get the 737 MAX certified. “Forkner repeatedly indicated to [an] ex-colleague that he  
2 feared losing his job if the FAA rejected Boeing’s arguments to minimize training.”<sup>69</sup>

3 202. At this point, Boeing recognized that the FAA AEG was under the  
4 misimpression that MCAS operated only during a high-speed, wind up turn and could not  
5 operate at lower Mach speeds, such as at Mach 0.2. Mr. Forkner and Mr. Gustavsson  
6 therefore knew, at least as of the time of this chat communication, that the FAA AEG’s  
7 provisional “Level B” differences-training determination had been based in part on outdated  
8 and inaccurate information about MCAS. DPA-A ¶ 33.

9 203. Boeing also knew that MCAS’s expanded operational scope was relevant to  
10 the FAA AEG’s decisions about the content of the 737 MAX FSB Report, including  
11 whether to include information about MCAS. Boeing similarly understood that it was their  
12 responsibility to update the FAA AEG about any relevant changes to the 737 MAX’s flight  
13 controls—such as MCAS’s expanded operational scope. DPA-A ¶ 34.

14 204. Despite knowing that the FAA AEG had issued its provisional “Level B”  
15 determination without any awareness that MCAS’s operational scope had been expanded  
16 to include high angle of attack conditions in nearly the entire speed range of ordinary  
17 commercial flight, Boeing did not correct the FAA AEG’s understanding of MCAS’s  
18 operational scope or otherwise ensure that the FAA AEG’s “Level B” determination was  
19 based on an accurate understanding of MCAS’s operation. Instead, Boeing intentionally  
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21  
22  
23  
24

25 <sup>69</sup> Andy Pasztor et al. Ex-Boeing Pilot Complained of Management Pressure on  
26 MAX, Former Colleagues Say, THE WALL STREET JOURNAL, (October 23, 2019)  
<https://www.wsj.com/articles/ex-boeing-pilot-complained-of-management-pressure-on-max-former-colleagues-say-11571858920>.

1 withheld and concealed from the FAA AEG their knowledge of MCAS's expanded  
2 operational scope. DPA-A ¶ 35.

3 205. For example, shortly after the simulated "shocker alert!" test flight described  
4 above, Mr. Forkner talked with FAA AEG Employee-1, who asked Mr. Forkner about the  
5 simulated test flight. Mr. Forkner intentionally withheld and concealed from FAA AEG  
6 Employee-1 the fact that MCAS's operational scope had been expanded beyond what the  
7 FAA AEG relied upon when it issued its provisional "Level B" differences-training  
8 determination for the 737 MAX. DPA-A ¶ 36.

9  
10 206. Around the time that Mr. Forkner and Mr. Gustavsson discussed MCAS's  
11 expanded operational scope, Mr. Forkner asked a Boeing executive assigned to the 737  
12 MAX program about MCAS's operational scope. The executive confirmed to Mr. Forkner  
13 that MCAS could activate beyond the limited operational scope of a high-speed, wind-up  
14 turn. The executive suggested that Mr. Forkner contact certain subject-matter experts at  
15 Boeing for more specific information about MCAS's operational scope. DPA-A ¶ 37.

16  
17 207. On or about November 17, 2016, the FAA AEG emailed three Boeing  
18 employees, including Mr. Forkner, Mr. Gustavsson, and another Boeing employee, a draft  
19 of the forthcoming 737 MAX FSB Report. That same day, Mr. Forkner asked Mr.  
20 Gustavsson and the other Boeing employee to review the draft 737 MAX FSB Report "for  
21 any glaring issues." DPA-A ¶ 38.

22  
23 208. On or about November 22, 2016, the other Boeing employee emailed the  
24 draft 737 MAX FSB Report back to the FAA AEG with proposed edits. Mr. Forkner and  
25 Mr. Gustavsson were included on this email. Mr. Forkner included a proposed edit to delete  
26 a reference to MCAS, and wrote, "We agreed not to reference MCAS since it's outside



1 normal operating envelope.” Boeing, including Mr. Forkner and Mr. Gustavsson, did not  
2 share the fact of MCAS’s expanded operational scope with the FAA AEG or otherwise  
3 corrected the FAA AEG’s misimpression that MCAS’s operational scope was limited to  
4 high-speed, wind-up turns. DPA-A ¶ 39.

5  
6 209. In doing so, Boeing, including Mr. Forkner and Mr. Gustavsson, knowing or  
7 unknowingly deceived the FAA AEG into believing that the basis upon which the FAA  
8 AEG had initially “agreed” to remove any information about MCAS from the 737 MAX  
9 FSB Report—that MCAS could only activate during the limited operational scope of a high-  
10 speed, wind-up turn—remained the same. Boeing, including Mr. Forkner and Mr.  
11 Gustavsson, withheld their knowledge of MCAS from the FAA AEG to avoid risking the  
12 FAA AEG taking any action that could threaten the differences-training determination for  
13 the 737 MAX. DPA-A ¶ 40.

14  
15 210. On or about January 17, 2017, Mr. Forkner again reminded the FAA AEG  
16 in an email to delete any reference to MCAS from the forthcoming 737 MAX FSB Report,  
17 and wrote, “Flight Controls: Delete MCAS, recall we decided we weren’t going to cover it  
18 [. . .] since it’s way outside the normal operating envelope.” Again, Boeing, including Mr.  
19 Forkner knowing or unknowingly deceived the FAA AEG into believing that the basis upon  
20 which the FAA AEG had initially “decided” to remove any information about MCAS from  
21 the 737 MAX FSB Report—that MCAS could only activate during the limited operational  
22 scope of a high-speed, wind-up turn—remained the same. DPA-A ¶ 41.

23  
24 211. By concealing MCAS’s expanded operational scope from the FAA AEG,  
25 Boeing, through Mr. Forkner and Mr. Gustavsson, defrauded, impaired, obstructed,  
26

1 defeated, and interfered with the FAA AEG's lawful function to evaluate MCAS and to  
2 include information about MCAS in the 737 MAX FSB Report. DPA-A ¶ 42.

3 212. Based on Boeing's misleading statements, half-truths, and omissions to the  
4 FAA AEG about MCAS, and in reliance on those statements and omissions, the FAA AEG  
5 agreed to delete all information about MCAS from the 737 MAX FSB Report. DPA-A ¶  
6 43.  
7

8 213. From in or around January 2017 through in or around July 2017 (when the  
9 737 MAX FSB Report was published), Mr. Forkner and Mr. Gustavsson on behalf of  
10 Boeing's "business units," including the sales team, sent and caused to be sent emails to  
11 representatives of various Boeing airline customers that had agreed to purchase the 737  
12 MAX, including major U.S.-based airlines. In these emails, Mr. Forkner and Mr.  
13 Gustavsson or members of their 737 MAX Flight Technical Team referenced and included  
14 drafts of the forthcoming 737 MAX FSB Report and airplane manuals and pilot-training  
15 materials for Boeing's 737 MAX airline customers. None of these items contained any  
16 information about MCAS, consistent with Mr. Forkner's and Mr. Gustavsson's efforts to  
17 deceive the FAA AEG into deleting information about MCAS. DPA-A ¶ 44.  
18

19 214. On or about July 5, 2017, the FAA AEG published the first 737 MAX FSB  
20 Report, which included the FAA AEG's "Level B" differences-training determination for  
21 the 737 MAX. DPA-A ¶ 45.  
22

23 215. Because of Boeing's intentional withholding of information from the FAA  
24 AEG, the final version of the 737 MAX FSB Report lacked information about MCAS, and  
25 relevant portions of this 737 MAX FSB Report were materially false, inaccurate, and  
26 incomplete. In turn, airplane manuals and pilot-training materials lacked information about

1 MCAS, and relevant portions of these manuals and materials were similarly materially false,  
 2 inaccurate, and incomplete as a result. DPA-A ¶ 46.

3 216. After the FAA AEG published the final version of the 737 MAX FSB  
 4 Report, Boeing continued to sell, and Boeing's customers were permitted to fly, the 737  
 5 MAX. Pilots flying the 737 MAX for Boeing's airline customers were not provided any  
 6 information about MCAS in their airplane manuals and pilot-training materials. DPA-A ¶  
 7 47.  
 8

9 217. Boeing recognized the difficulty of convincing the FAA to allow it to  
 10 deceive pilots about MCAS. Indeed, a responsible Boeing official is reported to have  
 11 remarked in an internal email that it would take a "Jedi mind trick" to convince the FAA to  
 12 go along with this scheme. Later, the same official admitted that he had "basically lied to  
 13 the regulators (unknowingly)" regarding MCAS.<sup>70</sup> The same official reported to the FAA  
 14 that Boeing had decided to "delete MCAS" from the Flight Crew Operating Manual,<sup>71</sup> and  
 15 the FAA apparently did not object.  
 16

17 218. There is evidence that Boeing's decision to intentionally omit any  
 18 disclosures about MCAS to purchasers or pilots was controversial within Boeing. On  
 19 information and belief, Boeing initially included descriptions of MCAS in drafts of material  
 20  
 21

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22 <sup>70</sup> See Jack Nicas, Natalie Kitroeff, David Gelles, and James Glanz, "Boeing Built  
 23 Deadly Assumptions Into 737 Max, Blind to a Late Design Change" New York Times  
 June 1, 2019, [https://www.nytimes.com/2019/06/01/business/boeing-737-max-](https://www.nytimes.com/2019/06/01/business/boeing-737-max-crash.html)  
[crash.html](https://www.nytimes.com/2019/06/01/business/boeing-737-max-crash.html).

24 <sup>71</sup> See Michael Laris, Ian Duncan and Lori Aratini, "FAA's lax oversight played  
 25 part in Boeing 737 Max crashes, but agency is pushing to become more industry-friendly"  
 Washington Post, October 28, 2019,  
 26 [https://www.washingtonpost.com/local/trafficandcommuting/faas-lax-oversight-played-](https://www.washingtonpost.com/local/trafficandcommuting/faas-lax-oversight-played-part-in-boeing-737-max-crashes-but-agency-is-pushing-to-become-more-industry-friendly/2019/10/27/bc0bf184-f4e1-11e9-ad8b-85e2aa00b5ce_story.html)  
[part-in-boeing-737-max-crashes-but-agency-is-pushing-to-become-more-industry-](https://www.washingtonpost.com/local/trafficandcommuting/faas-lax-oversight-played-part-in-boeing-737-max-crashes-but-agency-is-pushing-to-become-more-industry-friendly/2019/10/27/bc0bf184-f4e1-11e9-ad8b-85e2aa00b5ce_story.html)  
[friendly/2019/10/27/bc0bf184-f4e1-11e9-ad8b-85e2aa00b5ce\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/faas-lax-oversight-played-part-in-boeing-737-max-crashes-but-agency-is-pushing-to-become-more-industry-friendly/2019/10/27/bc0bf184-f4e1-11e9-ad8b-85e2aa00b5ce_story.html).

1 that would be supplied to purchasers and pilots. Later, however, Boeing appears to have  
 2 carefully scrubbed all mention of MCAS from these documents with one limited exception  
 3 – descriptions of how to test and repair MCAS were apparently buried deep in MAX  
 4 maintenance manuals so that mechanics could fix it when it malfunctioned.

5  
 6 219. There is evidence that Boeing initially included information about MCAS in  
 7 the 737 MAX Flight Crew Operating Manual,<sup>72</sup> but removed it in a later draft.<sup>73</sup>

8 220. As required by contract, Boeing supplied Timaeo with a Detail  
 9 Specification, representing that the 100-plus page Detail Specification constituted a detailed  
 10 and accurate technical description of the Aircraft and its systems. However, the Detail  
 11 Specifications failed to mention the existence of MCAS. Boeing's standard Detail  
 12 Specification was also scrubbed; early versions of it apparently listed MCAS in the table of  
 13 acronyms but did not use the term anywhere else. The versions of the Detail Specification  
 14 provided to Timaeo did not even mention MCAS in the acronym list.

15  
 16 **M. Boeing's Fraud and Malfeasance is Supported by a Plethora of Internal**  
 17 **Communications**

18 221. Boeing released over a hundred pages of internal communications between  
 19 Boeing employees to federal investigators. These communications show that key Boeing  
 20 employees raised significant concerns about the overall safety of the 737 MAX, and that  
 21 simulator training would be needed for pilots to fly the 737 MAX. However, Boeing  
 22

23  
 24 <sup>72</sup> See Michael Laris, Ian Duncan and Lori Aratini, "FAA's lax oversight played  
 25 part in Boeing 737 Max crashes, but agency is pushing to become more industry-friendly"  
 26 Washington Post, October 28, 2019,  
[https://www.washingtonpost.com/local/trafficandcommuting/faas-lax-oversight-played-part-in-boeing-737-max-crashes-but-agency-is-pushing-to-become-more-industry-friendly/2019/10/27/bc0bf184-f4e1-11e9-ad8b-85e2aa00b5ce\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/faas-lax-oversight-played-part-in-boeing-737-max-crashes-but-agency-is-pushing-to-become-more-industry-friendly/2019/10/27/bc0bf184-f4e1-11e9-ad8b-85e2aa00b5ce_story.html).

<sup>73</sup> *Id.*

1 intentionally concealed the problems from the FAA and its customers, including Timaro.  
2 Boeing employees even mocked federal rules, bragged about deceiving FAA regulators,  
3 and ridiculed the 737 MAX's safety.

4  
5 222. The Boeing communications discussed above and herein show that Boeing  
6 hid the fact that the 737 MAX had software problems and Boeing's skilled test pilots  
7 crashed the 737 MAX multiple times in the simulator. On May 5, 2015, a Boeing test pilot  
8 wrote, "I crashed big time my first few times, that's what scares me about showing any of  
9 this to [the FAA]." Exhibit 5 at 51. Boeing then hid those results from the FAA and its  
10 customers. In reference to interactions with the FAA, one Boeing employee wrote on May  
11 15, 2018, "I still haven't been forgiven by God for the covering up I did last year" (*id.* at  
12 68), while on March 22, 2018 an employee wrote, "[t]hey do not understand the liability we  
13 as a company are taking on . . . Not sure if I will be returning in April given this – am not  
14 lying to the FAA[.] Will leave that to people who have no integrity." *Id.* at 75. Multiple  
15 other communications between Boeing employees produced by Boeing as part of the U.S.  
16 government's investigation into the 737 MAX evidence instances in which Boeing  
17 concealed 737 MAX problems from the FAA during the aircraft's certification, including  
18 communications sent on July 7, 2016; January 5, 2016; August 25, 2015; May 29, 2015;  
19 April 12, 2016; May 15, 2018; and April 8, 2018. *See id.* at 42, 48, 50-54, 97, 98,  
20 respectively.  
21

22  
23 223. Boeing knew its design of the 737 MAX was not safe. On February 8, 2018,  
24 a Boeing employee asked, "Would you put your family on a MAX simulator trained  
25 aircraft?" *Id.* at 103. The Boeing colleague responded, "No." *Id.* at 103. One Boeing  
26

1 employee further questioned the design of the aircraft on April 26, 2017, stating, “This  
2 airplane is designed by clowns, who are in turn supervised by monkeys.” *Id.* at 84.

3 224. Boeing was afraid that if FAA test pilots or customer pilots got in the  
4 simulator, they would likely crash (as Boeing’s skilled test pilots already had), thus  
5 exposing the 737 MAX’s problems. The 737 MAX program would then be a failure. On  
6 March 28, 2017, Boeing’s Chief Technical Pilot, Mark Forkner, wrote to another Boeing  
7 employee, “I want to stress the importance of holding firm there will not be any type of  
8 simulator training required to transition from NG to MAX. Boeing will not allow that to  
9 happen. We’ll go face to face with any regulator who tries to make that a requirement.” *Id.*  
10 at 28. On November 22, 2015, Mark Forkner also wrote, “Failure to obtain Level B training  
11 for RCAS is a planet-killer for the MAX.” *Id.* at 90.

12 225. Boeing purposely misled the FAA with “Jedi-mind tricks” and pressured the  
13 FAA so they would not require simulator training. *See, e.g., id.* at 11, 19, 23, 32, 56, 81. On  
14 January 5, 2016, a two Boeing employees wrote about pressuring the FAA, “I think we  
15 make our money at this meeting by getting them to buy into the training...I think with all  
16 the inexperience present, we should be able to gang up on them and steer [sic] it the direction  
17 we want.” *Id.* at 48. On July 7, 2016, a Boeing employee also wrote about pressuring the  
18 FAA, “I’m not too worried about her. She knows damn well that if her and her alone makes  
19 this call that this stupid NNC requires sim training that she’ll get crucified.” *Id.* at 42.

20 226. Multiple Boeing communications also evidence Boeing purposely deceiving  
21 the FAA during the 737 MAX certification process. On February 20, 2017, a Boeing  
22 employee wrote in regard to the FAA’s review of Boeing’s simulator testing, “Amazing  
23 what a brown envelope can achieve...The FAA were neither thorough nor  
24  
25  
26

1 demanding...And the lies, the damned lies – I was removed from the simulator for three  
2 days in the week leading up to the evaluation on the instructions of a Senior Manager so  
3 that certainly (sic) individuals could ‘tune’ with the pilot. The tuning then fouled up multiple  
4 QTG tests and was clearly wrong and the pilot was forced to sign a SoC that was clearly  
5 based on a lie. Another Senior Manager was also screamed at in a temper tantrum by said  
6 individual and also barred from the simulator.” *Id.* at 109.

8 227. On August 18, 2016, a Boeing marketing employee celebrated the news that  
9 the FAA would not require additional simulator training for 737 NG pilots, “This is a big  
10 part of the operating cost structure in our product marketing decks, and is at the heart of  
11 [redacted] \$\$\$ analyses. Again, NICE JOB!!” *Id.* at 11.

13 228. Boeing’s communications also show that Boeing purposely deceived  
14 customers to “save [Boeing] a sick amount of \$\$\$\$” and would “make them feel stupid  
15 about trying to require any additional training requirements.” *Id.* at 88 (December 12, 2017  
16 Boeing employee communication). Boeing even dismissed Lion Air’s request for  
17 simulation training prior to Lion Air’s crash. On June 5, 2017, a Boeing employee wrote,  
18 “Now friggin [Lion Air] might need a sim to fly the MAX, and maybe of their own stupidity.  
19 I’m scrambling trying to figure out how to unscrew this now!” *Id.* at 78. Indeed, when Lion  
20 Air—one of the first MAX operators—sought to require simulator training for pilots  
21 transitioning to the 737 MAX, a Boeing employee encouraged the airline to drop this  
22 requirement. Instead, Boeing suggested that Lion Air adopt “less effective alternatives such  
23 as requiring flight time in previous models of the 737, or ensuring that a pilot’s first MAX  
24  
25  
26

1 flight was alongside a pilot with MAX experience.<sup>74</sup> The same Boeing official also stated  
 2 that “there is absolutely no reason to require your pilots to require a MAX simulator to begin  
 3 flying the 737 MAX. Once the engines are started, there is only one difference between NG  
 4 and MAX procedurally, and that is that there is no OFF position of the gear handle. Boeing  
 5 does not understand what is to be gained by a three-hour simulator session, when the  
 6 procedures are essentially the same.”<sup>75</sup> These representations were false or misleading at  
 7 the time they were made. Boeing was highly motivated to convince Lion Air to forego  
 8 simulator training given that Lion Air’s MAX training decisions would likely influence  
 9 those of other MAX operators.<sup>76</sup>

11 229. Documents also show the intense pressure exerted by Boeing to prevent  
 12 simulator training for pilots in keeping with its money-driven goals. In March 2017,  
 13 Boeing’s 737 Chief Technical Pilot wrote “I want to stress the importance of holding firm  
 14 that there will not be any type of simulator training required to transition from NG to MAX.  
 15 Boeing will not allow that to happen. We’ll go face to face with any regulator who tries to  
 16 make that a requirement.”<sup>77</sup> It was not until January 2020, after the deaths of 346 people in  
 17 737 MAX crashes, that Boeing finally dropped its year-long insistence that 737 pilots do  
 18  
 19

21 <sup>74</sup> Sean Broderick, “Boeing Fought Lion Air On Proposed MAX Simulator  
 22 Training Requirement” Reuters, Jan. 10, 2020, <https://aviationweek.com/air-transport/boeing-fought-lion-air-proposed-max-simulator-training-requirement>.

23 <sup>75</sup> Sean Broderick, “Boeing Fought Lion Air On Proposed MAX Simulator  
 24 Training Requirement” Reuters, Jan. 10, 2020, <https://aviationweek.com/air-transport/boeing-fought-lion-air-proposed-max-simulator-training-requirement>.

25 <sup>76</sup> *Id.*

26 <sup>77</sup> Jamie Freed and Tracy Rucinski, “Factbox: In Boeing internal messages, employees distrust the 737 MAX and mock regulators,” Reuters, Jan. 9, 2020, <https://www.reuters.com/article/us-boeing-737max-factbox/factbox-in-boeing-internal-messages-employees-distrust-the-737-max-and-mock-regulators-idUSKBN1Z90NP>.



1 not need simulator training to transition to the 737 MAX, and sent a letter to all MAX  
 2 operators stating that it now agreed that MAX-specific simulator training should be  
 3 required.<sup>78</sup>

4  
 5 230. As described herein, Boeing's test pilots' concerns about the 737 MAX were  
 6 completely accurate; evidenced by the unfortunate and preventable fatalities resulting from  
 7 the sale and operation of the 737 MAX. The communications show that Boeing senior  
 8 management did not want to hear about issues, including the simulator issues, and refused  
 9 to accept delays bringing the aircraft to market. For example, on April 8, 2018,  
 10 communications between Boeing employees regarding simulator testing identified that the  
 11 737 "pitched [ ] into a stall" and "[did not] see how this will get fixed next week," but one  
 12 Boeing employee stated, "But hey, [Boeing's] 'other' pilots can probably sign this off as no  
 13 training effect." *Id.* at 98. Communications between Boeing employees on May 18, 2018  
 14 further state, "The sim group has created a culture of 'good enough' And that is an  
 15 incredibly low bar...It can't be how we do things at Boeing anymore...I have used the  
 16 words 'misleading' and 'mischaracterization' a lot over the last two years in relation to  
 17 [t]his program. I could be even more honest [and] use other synonyms that even better  
 18 describe what has been going on." *Id.* at 64-65. A Boeing employee wrote on February 8,  
 19 2018, "I don't know how to refer to the very, very few of us on the program who are  
 20 interested only in truth [b]ut it's mostly depressing that it's so few...I'm sure you, me, and  
 21 [redacted] will all be sacked if we keep our position. I'm not kidding – if I could go back a  
 22  
 23  
 24

25  
 26 <sup>78</sup> Natalie Kitroeff and David Gelles, "Boeing Will Recommend 737 Max Flight Simulator Training for Pilots," New York Times, Jan. 7, 2020, <https://www.nytimes.com/2020/01/07/business/boeing-737-max-simulator-training.html>.

1 year, I would vote ‘no go’...” (*id.* at 103), while on March 28, 2018, a Boeing employee  
2 wrote, “I’m fed up with...the state of the simulator or the problems that will arise...” *Id.* at  
3 100. On April 24, 2018, a Boeing employee wrote, “The schedule simply did not permit for  
4 any corrective actions to be taken; particularly given the circumstances of the program and  
5 for a device which is clearly undermaintained. No engineering support was ever  
6 planned...despite my objections when my initial proposals were refused for being ‘overly  
7 conservative.’” *Id.* at 105. Further on April 24, 2019, a Boeing employee wrote, “I let it  
8 slide for the Miami qualification and put my name to something I didn’t have the  
9 opportunity to check thoroughly due to time constraints.” *Id.* at 106.

11 231. Boeing knew there was a serious risk of the 737 MAX crashing as a result  
12 of management’s coordinated directives to sell the aircraft with false representations about  
13 training and to obtain an unwarranted certification matching that falsehood. The Boeing  
14 employees involved hid that fact from the FAA and its customers, including Timaero, with  
15 not only the blessing but the demand of management.

17 232. Ultimately, Boeing misled the FAA into approving just one hour of pilot  
18 training on an iPad about the differences between the 737 MAX and the previous 737 model.  
19 Boeing also knowingly misrepresented to customers, including Timaero, that no additional  
20 simulator training would be required for pilots already certified to fly its predecessor 737  
21 NG. MCAS, however, was not even mentioned in the one-hour training and was also  
22 removed from the flight crew operations manual.

24 233. Furthermore, despite knowing MCAS posed an ongoing airplane safety  
25 issue, particularly after the Lion Air Crash in October 2018, Boeing nevertheless issued  
26 public statements assuring that the 737 MAX airplane was “as safe as any airplane that has

1 ever flown the skies.” Boeing has agreed to pay \$200 million to settle related civil charges  
 2 brought by the U.S. Securities and Exchange Commission for defrauding the public with  
 3 such statements.<sup>79</sup>

4  
 5 234. Therefore, Boeing knew that the 737 MAX was likely to crash and hid that  
 6 fact from customers, customer pilots, airlines, and regulators who were left to learn the risks  
 7 themselves.

8 **N. Meanwhile, Timaero and Boeing Execute Six Additional Supplemental**  
 9 **Agreements Between 2017-2018, and Boeing Delivers Two 737 MAX Aircraft to**  
 10 **Timaero in December 2018**

11 235. On August 28, 2017, Timaero and Boeing entered Supplemental Agreement  
 12 No. 2. Supplemental Agreement No. 2 provided that “[t]he Purchase Agreement is amended  
 13 as set forth above, and all other terms and conditions of the Purchase Agreement remain  
 14 unchanged and are in full force and effect.”

15 236. On November 12, 2017, Timaero and Boeing entered Supplemental  
 16 Agreement No. 3. Supplemental Agreement No. 3 provided that “[t]he Purchase Agreement  
 17 is amended as set forth above, and all other terms and conditions of the Purchase Agreement  
 18 remain unchanged and are in full force and effect.”

19 237. On February 26, 2018, Timaero and Boeing entered Supplemental  
 20 Agreement No. 4. Supplemental Agreement No. 4 provided that “[t]he Purchase Agreement  
 21 is amended as set forth above, and all other terms and conditions of the Purchase Agreement  
 22 remain unchanged and are in full force and effect.”  
 23

24  
 25  
 26 <sup>79</sup> Boeing to Pay \$200 Million to Settle SEC Charges that it Misled Investors about  
 the 737 MAX, dated September 22, 2022, <https://www.sec.gov/news/press-release/2022-170>.

1           238. On September 21, 2018, Timaero and Boeing entered Supplemental  
2 Agreement No. 5. Supplemental Agreement No. 5 provided that “[t]he Purchase Agreement  
3 is amended as set forth above, and all other terms and conditions of the Purchase Agreement  
4 remain unchanged and are in full force and effect.”

5  
6           239. On September 28, 2018, Timaero and Boeing entered Supplemental  
7 Agreement No. 6. Supplemental Agreement No. 6 provided that “[t]he Purchase Agreement  
8 is amended as set forth above, and all other terms and conditions of the Purchase Agreement  
9 remain unchanged and are in full force and effect.”

10           240. On November 29, 2018, Timaero and Boeing entered Supplemental  
11 Agreement No. 7. Supplemental Agreement No. 7 provided that “[t]he Purchase Agreement  
12 is amended as set forth above, and all other terms and conditions of the Purchase Agreement  
13 remain unchanged and are in full force and effect.”

14  
15           241. At all times, Timaero has acted in accordance with its contractual obligations  
16 under the Purchase Agreement.

17           242. Timaero has made all advanced payments in accordance with its contractual  
18 schedule. Timaero paid for and accepted two (2) 737 MAX aircraft provided by Boeing  
19 under the Purchase Agreement in December 2018.

20           243. Pursuant to this acceptance, Timaero signed a form Acceptance of  
21 Delivery—drafted by Boeing—without knowledge of the 737 MAX’s problems, or the  
22 ability to discover on its own what Boeing had failed to disclose.

23  
24           244. Boeing’s delivery of 737 MAX aircraft to Timaero constitutes a further  
25 representation regarding Level B non-simulator training and Boeing’s purported  
26 compliance with all applicable regulations and the airworthiness of the aircraft.

1           245.   Timaero accepted delivery of the first Model 737 MAX 8 (Serial Number  
2   60458, Registration Number HL8340) on December 19, 2018. As part of the delivery,  
3   Timaero representatives, including Barry Grimm and/or Alexey Rastashchenov, and other  
4   individuals took part in a Customer Acceptance Flight (C1 Flight).

5  
6           246.   Starting on December 19, 2018, the 737 MAX 8 HL8340 was then ferried  
7   from Seattle, Washington (BFI) to Seoul, South Korea (GMP) with stops in Anchorage,  
8   Alaska (ANC) and Sapporo, Japan (CTS). Upon information and belief, at least the  
9   following persons were present on the ferry flight from BFI to GMP: Kim Bong Kwan  
10   (Pilot), Chung Jae Woong (Pilot), Jeong Jinwoo (Pilot), Lee Yuho (Pilot), Park Chanwoo  
11   (Aircraft Maintenance Mechanic), Lee Jungryo (Aircraft Dispatcher).

12  
13           247.   Timaero accepted delivery of the second Model 737 MAX 8 (Serial Number  
14   60459, Registration Number HL8341) on December 29/30, 2018. As part of the delivery,  
15   at least Timaero representatives Barry Grimm and/or Alexey Rastashchenov, among other  
16   individuals, took part in a Customer Acceptance Flight (C1 Flight).

17           248.   Starting on December 30, 2018, the 737 MAX 8 HL8341 was then ferried  
18   from Seattle, Washington (BFI) to Seoul, South Korea (GMP) with stops in Honolulu,  
19   Hawaii (HNL) and Guam, Guam (GUM). Upon information and belief, at least the  
20   following persons were present on the ferry flight from BFI to GMP: Kim Beom (Pilot),  
21   Joo Jae Do (Pilot), An Jihyun (Pilot), Park Sunhyuk (Aircraft Maintenance Mechanic),  
22   Shim Seon Hwa (Aircraft Dispatcher).

23  
24           249.   Both HL8340 and HL8341 were continuously operated by EASTAR JET  
25   out of Seoul, Korea before the 737 MAX was grounded. The above acceptance and ferry  
26   flights, as well as the EASTAR JET flights, created a substantial risk of injury or death to

1 those aboard the aircraft as well as those on the ground as the aircraft flew over heavily  
2 populated areas. Timaero would not have flown the 737 MAX and exposed its employees  
3 and others to harm had they known of the 737 MAX aircraft's dangerous defects.

4  
5 250. When Boeing delivered two 737 MAX aircraft to Timaero in December  
6 2018, it was unknown to Timaero at the time that the aircraft did not conform to the  
7 aircraft's type certificate. However, this was known to Boeing, who did not disclose this  
8 information to Timaero at any time during the execution of the Purchase Agreement, any  
9 of the Supplemental Agreements, or prior to or during delivery of two 737 MAX aircraft.  
10 Timaero accepted delivery of its aircraft in December 2018 relying on Boeing's false  
11 assurances that the 737 MAX was safe and trusting that Boeing had disclosed all material  
12 information about the design and operation of the 737 MAX to Timaero and regulators. At  
13 least the above individuals flew in the aircraft, and thus suffered a real risk of injury or  
14 death, prior to the second fatal 737 MAX crash.

15  
16 251. As a result of Boeing's fraudulent and wrongful conduct, Timaero  
17 unwittingly purchased defective aircraft and exposed myriad people, including pilots,  
18 employees, agent representatives, and countless persons on the ground to undue risk of harm  
19 by flying its Aircraft.

20  
21 252. Further, not only has Boeing fraudulently misrepresented or omitted material  
22 information about the airplanes, Boeing failed to deliver any further aircraft in accordance  
23 with its contractual obligations in the Purchase Agreement.

24 253. Timaero relied on each of the above statements in deciding whether to  
25 execute each of the foregoing Supplemental Agreements, each of which expressly  
26 contracted that no additional simulator training would be required for 737 NG pilots.

1 Timaeo would not have purchased any 737 MAX aircraft, executed the Purchase  
 2 Agreement, executed any of the Supplemental Agreements, or accepted delivery of any 737  
 3 MAX aircraft had Boeing disclosed the information in Boeing's possession and control  
 4 identified in this complaint.

5  
 6 ***o.* U.S. Pilots Reported Uncommanded, Erratic Flight Paths to the FAA**

7 254. In 2018, pilots repeatedly voiced safety concerns about the Boeing 737  
 8 MAX 8, including problems with the autopilot system forcing the aircraft's nose down.  
 9 Pilots reported: altitude deviation due to the auto-pilot system which prompted Air Traffic  
 10 control to issue off-course vectors to the pilots and other aircraft in the area; the aircraft  
 11 pitching downward after autopilot was engaged on departure, the pilot reporting that he  
 12 could not "think of any reason the aircraft would pitch nose down so aggressively"; an  
 13 autopilot issue shortly after takeoff where the nose was forced so far down that the aircraft's  
 14 ground proximity warning system alerted the pilots that they were in immediate danger of  
 15 flying into the ground; and a failure of the autothrottles (which command the plane to  
 16 accelerate to a set speed within certain parameters) after takeoff and climb which prompted  
 17 manual override.<sup>80</sup> In an interview with the New York Times, Dennis Tajer, a pilot and  
 18 spokesperson for the Allied Pilots Association explained, "An aircraft dipping after takeoff  
 19 is not normal. It's beyond abnormal. It's unacceptable."<sup>81</sup>

20  
 21  
 22  
 23 <sup>80</sup> Gordon Dickson, Pilots warned of 'nose down' Boeing 737 Max 8 problems  
 24 before Ethiopia crash, FORT WORTH STAR-TELEGRAM (March 12, 2019),  
 25 <https://www.star-telegram.com/news/business/aviation/article227481979.html>; Kathryn  
 Wolfe, Pilots complained at least 5 times about Boeing 737 MAX problems, records  
 show, POLITICO (March 12, 2019), <https://www.politico.com/story/2019/03/12/pilots-boeing-737-1266090>.

26 <sup>81</sup> Mika Grondahl, Allison McCann, James Glanz, Blacki Migliozi, and Umi  
 Syam, In 12 Minutes, Everything Went Wrong How the pilots of Lion Air Flight 610 lost  
 control, THE NEW YORK TIMES (Dec. 12, 2018),

255. One captain called the flight manual excluding MCAS as “inadequate and almost criminally insufficient” and another stating that it was “unconscionable” that Boeing allowed the plane to be flown with inadequate pilot training and disclosures.<sup>82</sup>

**P. Crashes of Lion Air Flight 610 and Ethiopian Airlines Flight 302 and Boeing’s Response**

256. On October 29, 2018, Lion Air Flight 610, a Boeing 737 MAX, crashed shortly after takeoff into the Java Sea near Indonesia. All 189 passengers and crew on board died. DPA-A ¶ 48.

257. Boeing delivered the aircraft to Lion Air less than three months before the crash.

258. Following the Lion Air crash, the FAA AEG learned that MCAS activated during the flight and may have played a role in the crash. The FAA AEG also learned for the first time about MCAS’s expanded operational scope. DPA-A ¶ 49.

259. On March 10, 2019, Ethiopian Airlines Flight 302, a Boeing 737 MAX, crashed shortly after takeoff near Ejere, Ethiopia. All 157 passengers and crew on board died. Following the Ethiopian Airlines crash, the FAA AEG learned that MCAS activated during the flight and may have played a role in the crash. DPA-A ¶ 53.

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<https://www.nytimes.com/interactive/2018/12/26/world/asia/lion-air-crash-12-minutes.html>.

<sup>82</sup> Cary Aspinwall, Ariana Giorgi, and Dom DiFurio, Several Boeing 737 Max 8 pilots in U.S. complained about suspected safety flaw, THE DALLAS MORNING NEWS (March 12, 2019), <https://www.dallasnews.com/business/airlines/2019/03/12/several-boeing-737-max-8-pilots-in-u-s-complained-about-suspected-safety-flaw/>.



260. On March 13, 2019, the 737 MAX was officially grounded in the United States, indefinitely halting further flights of this airplane by any U.S.-based airline. DPA-A ¶ 54.

261. Both the Lion Air and Ethiopian Airlines flights were a result of MCAS malfunction. In fact, Boeing knew within hours of the first crash that MCAS likely caused the crash. Boeing Commercial Airplane’s Chief Engineer, John Hamilton, testified in front of Congress that, “[i]n the hours following the Lion Air accident, we convened a group of experts from around the company and . . . [w]e quickly identified that this MCAS activation could have been a scenario.”<sup>83</sup>

262. After the crashes of Lion Air Flight 610 and Ethiopian Airlines Flight 302, all 737 MAX aircraft were grounded worldwide.

#### **Q. Boeing’s Response to the Catastrophic Failure of its 737 MAX Aircraft**

263. Boeing’s response to the 737 MAX crashes and subsequent grounding crisis was horrendous and despicable. Boeing first attempted to blame the pilots, the airlines, and its own subcontractors for the 737 MAX’s defects and the crashes. Boeing started trying to fix MCAS shortly after the Lion Air crash, and euphemistically called it a “product improvement.” Even after the Lion Air crash, Boeing tried to keep the existence of MCAS secret until the FAA forced more disclosure. After the 737 MAX was grounded following the Ethiopian crash, Boeing promised that it would fix the problem within weeks, and that customers and passengers could safely and confidently resume 737 MAX flights in short

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<sup>83</sup> U.S. Congress Hearing Before the Committee on Transportation and Infrastructure House of Representatives. “The Boeing 737 Max: Examining the Design, Development, and Marketing of the Aircraft” (Date: Oct. 30, 2019) page 54; Text From: Congress.gov.

1 order. As the grounding dragged on, Boeing repeatedly promised a fix just around the  
 2 corner, but was unable to deliver for nearly twenty months. Boeing's botched and  
 3 ineffective response to the crashes and its own misconduct has made the 737 MAX's  
 4 problems much worse and has substantially increased Plaintiffs' damages. Although Boeing  
 5 is a long-standing and valued employer in the Puget Sound region, its design and sale of the  
 6 737 MAX and its response to the crashes and grounding crisis do not reflect Boeing's  
 7 traditional values.

9 264. Boeing knew or should have known that the MCAS was responsible for the  
 10 Lion Air crash, including because of the numerous pilots who reported issues of  
 11 uncommanded nose-down maneuvers. Boeing warned of a possible fault in the aircraft's  
 12 angle-of-attack system by updating the flight crew operations manual for the 737 MAX  
 13 about a week after the Lion Air crash.

15 265. After the crash of Lion Air Flight 610, Boeing for the first time provided to  
 16 airlines details about the MCAS, including the MCAS's 2.5-degree movement of the  
 17 horizontal stabilizer and the fact that it can be triggered multiple times.

18 266. A November 2018 FAA analysis following the Lion Air crash projected up  
 19 to 15 additional catastrophic failures over the 30–45-year lifespan of 737 MAX fleet.<sup>84</sup> A  
 20 retired FAA and Pentagon air-safety official has stated that the projected 15 additional  
 21 crashes “would be an unacceptable number in the modern aviation-safety world.”<sup>85</sup>  
 22

23  
 24 <sup>84</sup> Andy Pasztor and Andrew Tangel, Internal FAA Review Saw High Risk of 737  
 25 MAX Crashes, THE WALL STREET JOURNAL (December 11, 2019),  
 26 <https://www.wsj.com/articles/internal-faa-review-saw-high-risk-of-737-max-crashes-11576069202>.

<sup>85</sup> Andy Pasztor and Andrew Tangel, Internal FAA Review Saw High Risk of 737  
 MAX Crashes, THE WALL STREET JOURNAL (December 11, 2019),

1           267. The FAA issued Emergency Airworthiness Directive (“Emergency AD”) 2  
2018-23-51 on November 7, 2018. The Emergency AD provided mandatory warnings and 3  
instructions regarding “unsafe condition[s] ... likely to exist or develop” to “owners and 4  
operators of The Boeing Company Model 737-8 and -9 airplanes.” 5

6           268. The Emergency AD “was prompted by analysis performed by the 7  
manufacturer showing that if an erroneously high single angle of attack (AOA) sensor input 8  
is received by the flight control system, there is a potential for repeated nose-down trim 9  
commands of the horizontal stabilizer.” The Emergency AD “address[ed] this potential . . . 10  
nose-down trim, which could cause the flight crew to have difficulty controlling the 11  
airplane, and lead to excessive nose-down altitude, significant altitude loss, and possible 12  
impact with terrain.” 13

14           269. The Emergency AD further revised instructions to flight crews in the 15  
operating procedures of the flight manual “in the event an uncommanded nose down 16  
stabilizer trim is experienced on the 737-8/-9.” The Emergency AD instructed the flight 17  
crew to follow the “Runaway Stabilizer procedure,” which states to “[d]isengage autopilot 18  
and control airplane pitch attitude with control column and main electric trim as required. 19  
If relaxing the column causes the trim to move, set stabilizer trim switches to CUTOUT. If 20  
runaway continues, hold the stabilizer trim wheel against rotation and trim the airplane 21  
manually.” The Emergency AD failed to provide a detailed description of the MCAS. 22

23           270. Boeing’s solution of treating an MCAS malfunction as a runaway stabilizer 24  
has been challenged by pilots and aviation experts. First, in contrast to a runaway stabilizer’s 25

26           <https://www.wsj.com/articles/internal-faa-review-saw-high-risk-of-737-max-crashes-11576069202>.

1 continuous movement, an MCAS failure causes an uncommanded movement that, even if  
2 counteracted by a pilot, is triggered by MCAS again. Second, the MCAS disables the ability  
3 of a pilot to cut electric power to a stabilizer, which can interrupt any stabilizer movement.  
4

5 271. Boeing intentionally downplayed MCAS's significant problems and failed  
6 to take adequate preventative measures. Boeing also failed to inform the public and  
7 customers, such as Timaero, of the danger MCAS presented. Boeing further failed to  
8 adequately disclose the significant differences between the 737 MAX and its predecessors.

9 272. Even following the two crashes, Boeing continued to fail to take appropriate  
10 action as it was concerned with the economic impact to its business. Boeing was concerned  
11 airlines would ground aircraft, cancel orders, or purchase new aircraft from its rival Airbus.  
12 Boeing deliberately downplayed the unsafe nature of its defective aircraft, and falsely lured  
13 the public into believing the 737 MAX was airworthy and safe to induce customers,  
14 including Timaero, to purchase and accept delivery of 737 MAX aircraft.  
15

16 273. The world grounded the Boeing 737 MAX following the Ethiopian Airlines  
17 crash. China was the first country to do so on March 11, 2019. Dozens of countries followed.  
18 On March 13, 2019, the FAA issued a temporary ban on the 737 MAX. The FAA's  
19 Emergency Order of Prohibition states:  
20

21 "Under 49 U.S.C. 46105(c), the Acting Administrator has  
22 determined that an emergency exists related to safety in air  
23 commerce. On March 13, 2019, the investigation of the  
24 ET302 crash developed new information from the wreckage  
25 concerning the aircraft's Start Printed Page 9706  
26 configuration just after takeoff that, taken together with  
newly refined data from satellite-based tracking of the  
aircraft's flight path, indicates some similarities between the  
ET302 and JT610 accidents that warrant further investigation  
of the possibility of a shared cause for the two incidents that  
needs to be better understood and addressed. Accordingly,

the *Acting Administrator is ordering all Boeing 737 MAX airplanes to be grounded pending further investigation.*<sup>86</sup>

274. Therefore, Boeing was forced to ground all 737 MAX aircraft after the Ethiopian Airlines crash investigation revealed similarities with the Lion Air crash.

275. On December 16, 2019, Boeing announced that it is suspending production of the 737 MAX starting in January 2020.<sup>87</sup> That same day, Stanley A. Deal, President & CEO of Boeing Commercial Airplanes, wrote to Timaero to inform it of Boeing's decision to suspend production and delivery of Timaero's aircraft until a time uncertain.

276. The 737 MAX aircraft contracted for between Boeing and Timaero are now either worthless, commercially damaged beyond repair according to the terms of the Purchase Agreement, or seriously diminished in value. Timaero therefore has been harmed and continues to be harmed by Boeing's wrongful actions.

#### **R. Investigations Related to the 737 MAX**

277. Many investigations have been opened into Boeing's fraud and certification failures.

278. As shown above, Boeing admitted to criminally defrauding the FAA in certifying the 737 MAX following an investigation by the United States Department of Justice.

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<sup>86</sup> Notification of Emergency Order of Prohibition, 84 Fed. Reg. 9705-06 (March 13, 2019), <https://www.federalregister.gov/documents/2019/03/18/2019-05067/operators-of-boeing-company-model-737-8-and-boeing-company-model-737-9-airplanes-emergency-order-of> (emphasis added).

<sup>87</sup> See <https://boeing.mediaroom.com/2019-12-16-Boeing-Statement-Regarding-737-MAX-Production>.

279. Other investigations and resulting reports include the United States House of Representatives and Senate, the Department of Transportation, the Securities and Exchange Commission, foreign and international organizations.<sup>88</sup> Boeing's acts and omissions are also the subject of private litigation from crash victims' families, Boeing shareholders, Boeing customers, and airline pilots.<sup>89</sup>

280. In September 2020, the House Committee on Transportation and Infrastructure issued its report entitled "The Design, Development, and Certification of the Boeing 737 MAX." The extensive report identifies a "disturbing pattern of technical miscalculations and troubling management misjudgments" by Boeing arising out of five thematic areas across the 737 MAX's development: (1) production pressure to compete with Airbus; (2) faulty design and performance assumptions; (3) a "culture of concealment" at Boeing; (4) the failure of Boeing employees designated as FAA "authorized representatives" to disclose MCAS concerns to the FAA; and (5) Boeing's ability to obtain favorable decisions from FAA management over the objections of the FAA's own technical experts. The Committee concluded Boeing "gambled with the public's safety" between crashes as it concealed the true nature of its flawed design from the flying public while hundreds of MAXs were in service.<sup>90</sup>

<sup>88</sup> For example, on March 9, 2020, the Federal Democratic Republic of Ethiopia Ministry of Transport published its Aircraft Accident Investigation Bureau Interim Investigation Report on Ethiopian Airlines Flight 302. Exhibit 8 hereto.

<sup>89</sup> Sinead Baker, "Here are all the investigations and lawsuits that Boeing and the FAA are facing after the 737 Max crashes killed almost 350 people," Business Insider, June 24, 2019, <https://www.businessinsider.com/boeing-737-max-crisis-list-lawsuits-investigations-faces-faa-2019-5>.

<sup>90</sup> The House Committee on Transportation & Infrastructure, Final Committee Report, The Design, Development & Certification of the Boeing 737 MAX, dated Sept. 2020,

281. Among the “several unmistakable facts” uncovered (*id.* at 6) the House T&I Committee discovered are that:

- a. “Boeing withheld crucial information from the FAA, [and] its customers . . .” including “concealing the very existence of MCAS from 737 MAX pilots.”<sup>91</sup>
- b. “In November 2012, for instance, it took a Boeing test pilot more than 10 seconds to respond to uncommanded MCAS activation during a flight simulator test, a condition the pilot found to be ‘catastrophic[.]’ . . . This event should have focused Boeing’s attention on the need for enhanced pilot training for MAX pilots. It didn’t.” Rather, despite Boeing’s “keen awareness of the importance of this information” and the “potentially ‘catastrophic’ consequences” that could result if it took a pilot 10 seconds to respond to uncommanded MCAS activation,” there is “no evidence that Boeing shared this information with the FAA, [or] its customers . . . .”<sup>92</sup>
- c. “One of Boeing’s key goals for the 737 MAX program was that simulator-based training would not be required for pilots transitioning to the 737 MAX from the 737 NG. That goal undermined appropriate pilot training requirements, hampered the development of safety features that

<https://transportation.house.gov/imo/media/doc/2020.09.15%20FINAL%20737%20MAX%20Report%20for%20Public%20Release.pdf>.

<sup>91</sup> *Id.* at 13.

<sup>92</sup> *Id.* at 25.

conflicted with that goal and created management incentives to downplay the risks of technologies that jeopardized that goal.”<sup>93</sup>

d. In March 2016, “Boeing sought, and the FAA approved, the removal of references to MCAS from Boeing’s Flight Crew Operations Manual (FCOM) . . . . As a result, 737 MAX pilots were precluded from knowing of the existence of MCAS and its potential effect on aircraft handling without pilot command.”<sup>94</sup>

282. Despite the intense scrutiny and the important public interest questions raised about the development and airworthiness of the 737 MAX, many of the facts of the 737 MAX’s development have been kept in Boeing’s or investigators’ hands and away from the public and from Timaero. But the documents that have been publicly released show that Boeing knowingly concealed from customers and pilots the existence of MCAS and other differences between the 737 NG and the 737 MAX. They also display Boeing’s push to avoid simulator or other extensive training due to marketing and economic pressures. Timaero reasonably believes that future disclosures, and discovery, will further confirm Boeing’s wrongful conduct.

**S. Timaero Based its Decision to Purchase the 737 MAX Aircraft on Boeing’s Representations**

283. Timaero based its decision to purchase 737 MAX aircraft on the representations made by Boeing that the aircraft would be certified by the FAA, be airworthy, and would not require additional simulator training for pilots already certified

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 20.



1 to fly its predecessor 737 NG. However, due to Boeing’s fraudulent conduct, Timaero was  
2 unable to make informed purchasing decisions, Timaero paid for and took delivery and  
3 subsequently resold unsafe aircraft, and lost business from undelivered aircraft that  
4 Boeing was required to deliver under the Purchase Agreement.  
5

6 284. Pursuant to the Purchase Agreement, Timaero notified Boeing on February  
7 28, 2019 that it planned to sell two 737 MAX aircraft scheduled to be delivered in May  
8 2019 and July 2019 to AFG Aviation, who would lease the aircraft to NordStar Airlines.  
9 Boeing began customizing the aircraft specifically to NordStar’s requirements and  
10 specifications. However, three days after the Ethiopian Airlines crash on March 13, 2019,  
11 Timaero notified Boeing that “[u]nder the circumstances, Nordstar has put the entire  
12 discussion on hold.” Timaero also notified Boeing that “[a]ll our other potential clients  
13 have put their discussions with us on hold as well pending further developments.”  
14 Timaero has been unable to sell or lease any 737 MAX aircraft since the two catastrophes.  
15

16 285. As part of the March 13 notification, Timaero informed Boeing that  
17 NordStar was in “continuous contact with Boeing” and stressed that “we need to be in a  
18 continuous dialogue and it’s important that Boeing keeps us advised of all the  
19 developments throughout” for AFG Aviation to purchase and NordStar to lease the 737  
20 MAX aircraft. However, Boeing has failed to keep Timaero, AFG Aviation, and NordStar  
21 up to date. Timaero has not been able to sell or lease any 737 MAX aircraft since the 2019  
22 worldwide grounding.  
23

## 24 V. CAUSES OF ACTION

### 25 Count I – Fraud

26

1           286. Timaero realleges the allegations of all prior paragraphs as if each is fully  
2 set forth herein.

3           287. Boeing is the manufacturer, designer, distributor, seller and/or supplier of  
4 the 737 MAX model aircraft. Under the directive of senior management, Boeing and/or  
5 employees working in the scope of their employment made knowingly false statements  
6 and/or omissions about material facts to Timaero to influence Timaero's decision to  
7 purchase the 737 MAX, execute the Purchase Agreement, execute the Supplemental  
8 Agreements (each of which provided that "[t]he Purchase Agreement is amended as set  
9 forth above, and all other terms and conditions of the Purchase Agreement remain  
10 unchanged and are in full force and effect,"), and to accept delivery of two 737 MAX  
11 aircraft.  
12

13           288. Boeing knew by at least 2012 that it could not build an aircraft under a 737  
14 amended type certificate requiring only Level B differences training because of the  
15 aerodynamic problems created by placing larger, more fuel-efficient engines on the existing  
16 737 NG frame. Boeing chose not to make the necessary structural changes to the aircraft's  
17 frame because that would affect the aircraft's ability to be certified under an amended type  
18 certification. Instead, Boeing utilized a flight control system (MCAS) to stabilize the aircraft  
19 and hid MCAS's full functionality from the FAA and Timaero because Boeing knew MCAS  
20 would jeopardize Level B non-simulator training. Boeing's plan enabled it to obtain FAA  
21 certification with Level B non-simulator training, and to market the 737 MAX as only  
22 needing computer-based training for 737 NG pilots. However, Boeing knew those  
23 statements were false. Further, the FAA repeatedly communicated to Boeing that adding  
24 MCAS (among other features) would result in additional simulator training.  
25  
26

1           289. As detailed above, however, as part of Boeing's authorized sales  
2 communications to induce customers to buy 737 MAX aircraft, Boeing represented to  
3 Timaero in multiple meetings, marketing materials, business proposals, press releases, and  
4 publicly that the 737 MAX would not require additional simulator training for pilots already  
5 certified to fly its predecessor 737 NG (Level B non-simulator pilot training requirements),  
6 and would be airworthy, safe, free from design defects, and in compliance with appropriate  
7 aviation regulations. Boeing and Timaero expressly contracted in the Purchase Agreement  
8 that no additional simulator training would be required for 737 NG pilots.  
9

10           290. Boeing's representations were false, misleading, and/or in reckless or  
11 negligent disregard of the truth. Boeing also concealed all or parts of the truth of material  
12 facts, including the 737 MAX's aerodynamic instability and the MCAS flight control  
13 system, when it had a legal duty to speak, and when it had already made representations to  
14 Timaero and the FAA.  
15

16           291. If Timaero had known about the aerodynamic instability during  
17 development and testing, MCAS, the design changes of the 737 MAX that required the  
18 use of MCAS, and the risks that these modifications posed, Timaero would not have  
19 purchased 737 MAX aircraft from Boeing, would not have entered into the Supplemental  
20 Agreements, and would not have accepted delivery of its Aircraft. But, in conjunction  
21 with the execution of the Purchase Agreement and each of the Supplemental Agreements,  
22 Timaero relied on Boeing's assurances that the 737 MAX was an improved version of the  
23 737 that would not require additional training or depart significantly from the operation  
24 and flight characteristics of the 737 NG or previous generations of the 737, and that the  
25 737 MAX would continue to have the best safety record of any aircraft.  
26

1           292. As a result of Boeing's inducement of Timaero to buy MAX aircraft  
2 through the Purchase Agreement and each of the Supplemental Agreements, and Boeing's  
3 other wrongful conduct, the 737 MAX aircraft that Timaero agreed to purchase have lost  
4 substantial value, if not all of their value, and/or are commercially damaged beyond repair  
5 according to the terms of the Purchase Agreement. Timaero has thus incurred significant  
6 damages in the form of diminution of value, as well as additional damages in the form of  
7 additional expense, costs of temporary cover, and other items.

8  
9           293. Even when or if Boeing is able to completely fix the aircraft so that they  
10 can fly, Timaero's ability to use the aircraft will be substantially diminished due to  
11 continuing and legitimate safety fears concerning the 737 MAX resulting from Boeing's  
12 misconduct.

13  
14           294. Boeing did not disclose any of the 737 MAX design and development  
15 problems to purchasers, including Timaero, because it did not want to jeopardize sales,  
16 including Boeing's sale of the aircraft to Timaero.

17           295. Boeing knew that the 737 MAX had materially different flight  
18 characteristics from the 737 NG, requiring Boeing to include MCAS in the 737 MAX.

19           296. Boeing did not disclose MCAS or the reasons why it was necessary in the  
20 737 MAX to Timaero. Boeing had a duty to disclose MCAS to customers, including  
21 Timaero, the FAA, and pilots. Failure to disclose MCAS and train pilots on MCAS  
22 resulted in two fatal crashes.

23  
24           297. Boeing did not disclose to Timaero that MCAS could engage in a way that  
25 would cause the 737 MAX to enter into a dive based on a fault or malfunction in only one  
26 of the aircraft's two AOA sensors.

1           298. As detailed above, Boeing continued to make the same knowingly false  
2 representations and omissions to Timaero before, during, and after signing the Purchase  
3 Agreement and before, during, and after execution of each of the Supplemental Agreements.  
4

5           299. Also as detailed above, when Boeing promised before, during, and after  
6 execution of the Purchase Agreement and the Supplemental Agreements that the 737 MAX  
7 would not require simulator training, Boeing knew its misrepresentations were false and  
8 had no intention of fulfilling its promise.

9           300. As a result of management's coordinated directives to sell the aircraft with  
10 false representations about training, Boeing set out to obtain an unwarranted certification  
11 matching that falsehood. After testing and test flights identified major flight problems, and  
12 after Boeing incompletely and disingenuously disclosed its initial MCAS design to the  
13 FAA, Boeing totally redesigned MCAS to address long-known flight stability problems.  
14 Boeing expanded and materially changed MCAS's functional abilities. Boeing knew it  
15 could not disclose its MCAS changes to the FAA because it would put its goal of no  
16 additional simulator training at even greater risk. As a result, Boeing purposely  
17 misrepresented the functional abilities of MCAS to the FAA, mischaracterized MCAS's  
18 failure condition, and omitted the MCAS redesign from the FAA. In the limited amount of  
19 information related to MCAS Boeing did disclose to the FAA, Boeing purposely  
20 mischaracterized the system and purposely gave only small amounts of information to  
21 different disconnected FAA employees so that the FAA could not piece the information  
22 together.  
23  
24

25           301. Further, Boeing knew there was a serious risk of the 737 MAX crashing and  
26 knew that MCAS was dangerous. Boeing's documents show it concealed the 737 MAX's

1 software problems from the FAA, and a skilled Boeing test pilot reported on May 5, 2015  
2 crashing the 737 MAX multiple times in the simulator. Boeing knew that its test pilots'  
3 crashed simulator results put the entire program at risk from being approved, and therefore,  
4 purposely omitted those results from the FAA and Timaero. Boeing concealed the fact that  
5 the 737 MAX was likely to crash from Timaero, who was left to learn the risks itself.  
6

7 302. Boeing made these representations and omissions knowing that Timaero was  
8 relying on their truth. It made them deliberately for its own economic advantage.

9 303. Boeing had a legal duty to correct its misrepresentations once made to the  
10 FAA and Timaero, and disclose its omissions to the FAA and Timaero, but failed to do so.  
11 Timaero relied on Boeing's misrepresentations and omissions as true at least because of  
12 Boeing's superior knowledge concerning the 737 MAX. Timaero has to rely on Boeing  
13 properly obtaining FAA certification because Timaero has no way to check Boeing's  
14 compliance with FAA requirements. Boeing purposely misled the FAA and Timaero and  
15 purposely omitted material information from the FAA to obtain certification, and from  
16 Timaero, as detailed above. Boeing's representations of airworthiness and only computer-  
17 based training for certified 737 NG pilots, combined with the circumstances of a long-term  
18 contractual relationship during certification, involving the initial Purchase Agreement and  
19 seven Supplemental Agreements, that involved Boeing delivering the aircraft and  
20 Timaero's pre-delivery payments, imposed on Boeing a duty to tell Timaero of problems  
21 that undermined or contravened its representations, including a duty to disclose that Boeing  
22 was not conducting the FAA certification process properly and that it was defrauding the  
23 FAA.  
24  
25  
26

1           304. Timaero was further aware of and relied on Boeing's representations to the  
2           FAA because Boeing received an FAA certification as required by the Purchase Agreement  
3           and Boeing communicated certification and satisfaction of the Purchase Agreement to  
4           Timaero. Boeing's representations to the FAA are inherently incorporated in Boeing's  
5           representations to Timaero that it obtained FAA certification and Boeing's delivery of  
6           aircraft that Boeing represents is validly certified.  
7

8           305. Only Boeing, not Timaero, may submit information and evidence to the FAA  
9           to obtain certification of the 737 MAX. Timaero is dependent therefore not only on the  
10          information, and the accuracy thereof, that Boeing provides to the FAA, but also Boeing's  
11          authority to submit information as an applicant for certification.  
12

13          306. Timaero was entitled to rely, and did rely, on Boeing's misrepresentations  
14          and omissions, as specified herein. Timaero would not have performed the following actions  
15          had it known the truth at the respective dates about Boeing's misrepresentations or that  
16          Boeing was concealing objectively material information relating to the 737 MAX from the  
17          FAA and Timaero:

- 18               1. entered into the Purchase Agreement on January 10, 2014 to purchase  
19               twenty (20) 737 MAX aircraft and paid a 1% deposit of the contract price  
20               of approximately \$20 million;
- 21               2. entered into the VEB-AGTA on January 10, 2014;
- 22               3. paid Boeing pre-delivery payments of \$189,224,800, which included  
23               paying 4% of each aircraft's sale price at 24 months prior to delivery, and  
24               5% of each aircraft's sale price at 21 months, 18 months, 15 months, and  
25               12 months prior to delivery;
- 26               4. entered into Supplemental Agreement No. 1 on September 15, 2016, which  
                converted two (2) Boeing 737-800 aircraft from a prior purchase agreement  
                into two (2) Boeing 737 MAX aircraft, and which provided that "[t]he  
                Purchase Agreement is amended as set forth above, and all other terms and  
                conditions of the Purchase Agreement remain unchanged and are in full  
                force and effect.";

5. entered into Supplemental Agreement No. 2 on August 28, 2017, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
6. entered into Supplemental Agreement No. 3 on November 12, 2017, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
7. entered into Supplemental Agreement No. 4 on February 26, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
8. entered into Supplemental Agreement No. 5 on September 21, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
9. entered into Supplemental Agreement No. 6 on September 28, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
10. entered into Supplemental Agreement No. 7 on November 29, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
11. paid for and accepted delivery of two (2) 737-MAX aircraft in December 2018; and
12. unwittingly omitted material facts to Timaero’s customers and potential customers to sell and lease 737 MAX aircraft.

307. Boeing’s misrepresentations and omissions were the proximate cause and cause in fact of Timaero’s damages.

308. Notably, as stated in the DPA, Boeing conspired to defraud the FAA AEG “[f]rom at least in and around November 2016 through at least in and around December 2018.” DPA-A ¶ 16. Accordingly, despite the fact that Boeing knew of material defects in the 737 MAX long before, even Boeing’s admitted fraud occurred coexistent in time with



1 the execution of the Supplemental Agreements and delivery of two 737 MAX aircraft to  
2 Timaero.

3 309. Further, with respect to Supplemental Agreement No. 1 entered into on  
4 September 15, 2016, which converted two Boeing 737-800 aircraft from a prior purchase  
5 agreement into two Boeing 737 MAX aircraft, Boeing secretly expanded MCAS's use as  
6 explained herein 6-months prior to execution of Supplemental Agreement No. 1, on March  
7 30, 2016, pursuant to Revision D. For the reasons stated herein, Boeing knew that the  
8 expansion of MCAS's operation on March 30, 2016 and the version of MCAS released on  
9 August 15, 2016 precluded Level B non-simulator training in all 22 of the 737 MAX aircraft  
10 that were to be delivered to Timaero. Boeing thus knew at least as early as March 30, 2016  
11 and without question by August 15, 2016, that it could not deliver aircraft to Timaero that  
12 only required Level B non-simulator training. Nevertheless, Boeing represented as of  
13 September 15, 2016 in Supplemental Agreement No. 1 that "all other terms and conditions  
14 of the [2014] Purchase Agreement," including the promise of delivering 20 aircraft that  
15 require only Level B non-simulator training "remain unchanged and [] in full force and  
16 effect." Boeing knew that its representation was not true and that its promise to deliver 20  
17 aircraft from the 2014 Purchase Agreement and the two aircraft from Supplemental  
18 Agreement No. 1 with only Level B non-simulator training would not be fulfilled. Boeing  
19 never intended that its promises would be fulfilled. Timaero relied on Boeing's  
20 misrepresentation that "all [] terms and conditions of the [2014] Purchase Agreement  
21 remain unchanged and are in full force and effect" in executing Supplemental Agreement  
22 No. 1. Timaero would not have entered into Supplemental Agreement No. 1, or any of the  
23  
24  
25  
26

1 Supplement Agreements, had Boeing disclosed that it secretly expanded MCAS's use at  
2 least as early as March 2016.

3 310. Further, upon information and belief, the information that led to the decision  
4 to design and implement Revision D was known to Boeing prior to Timaero's execution of  
5 the Purchase Agreement in January 2014. Thus, upon information and belief, Boeing knew  
6 that an expansion of MCAS was required prior to Timaero's execution of the Purchase  
7 Agreement. Boeing thus knew prior to January 10, 2014 that it could not deliver aircraft to  
8 Timaero that only required Level B non-simulator training. Nevertheless, Boeing  
9 represented and promised in the Purchase Agreement that it would deliver 20 aircraft that  
10 require only Level B non-simulator training. Boeing knew that its representations and  
11 promises were not true and that its promise to deliver 20 aircraft with only Level B non-  
12 simulator training would not be fulfilled. Boeing never intended that its promises would be  
13 fulfilled. Timaero relied on Boeing's misrepresentation in executing the Purchase  
14 Agreement. Timaero would not have entered into any of the Supplemental Agreements had  
15 Boeing disclosed its knowledge that MCAS's use would need to be expanded.

16 311. As early as 2012 to early 2014, and throughout the 737 MAX certification  
17 process, Boeing knew, should have known, and/or recklessly disregarded a high likelihood  
18 that it would have to lie to regulators to approve the 737 MAX utilizing MCAS with only  
19 Level B non-simulator training, obtain airworthiness certifications, and comply with all  
20 applicable regulations.

21 312. As early as 2012 to early 2014, and throughout the 737 MAX certification  
22 process, Boeing knew, should have known, and/or recklessly disregarded a high likelihood  
23 that its statements to Timaero during this timeframe about FAA approval requiring only  
24  
25  
26

1 Level B non-simulator training and Boeing's obtaining of airworthiness certifications and  
2 compliance with all applicable regulations were false, or misleading half-truths.

3 313. Even if Boeing thought, at one time, that its representations regarding Level  
4 B non-simulator training and its obtaining of airworthiness certifications and compliance  
5 with all applicable regulations were or were going to be true, Boeing acquired information  
6 as early as from 2012 to early 2014 and throughout the 737 MAX certification process that  
7 made its representations untrue or misleading. Boeing had a duty to correct its  
8 misrepresentations prior to Timaero's execution of the Purchase Agreement, each of the  
9 Supplemental Agreements, and delivery of 2 aircraft in December 2018.

10 314. At the time of this Third Amended Complaint, Boeing was contractually  
11 obligated in accordance with the Purchase Agreement to deliver five (5) Boeing Model 737-  
12 8 Aircraft to Timaero. Boeing, however, has only delivered two (2) 737-8 Aircraft, which,  
13 unknown to Timaero at the time, did not conform to the aircraft's type certificate.

14 315. Boeing's acts and conduct as averred herein have cause substantial,  
15 irrecoverable and irreparable consequential damages to Timaero's business reputation and  
16 goodwill, and have caused the resulting loss in the value of Timaero's business which is  
17 continuing and has constituted an ongoing concern for Timaero. At the time the Purchase  
18 Agreement and each of the Supplemental Agreements were executed, Boeing knew or  
19 should have known that Timaero would sell or enter into leasing contracts with third parties  
20 for the subject aircraft. For example, in Letter Agreement VEB-PA04022-LA-1301891 to  
21 the Purchase Agreement, Boeing acknowledged that "[i]t is understood that Customer  
22 [Timaero] intends to lease the 737 MAX to a third party or parties...and that such Lessees  
23 will be in the commercial airline business as an operator of aircraft." Timaero, however, has  
24  
25  
26

1 not been able to conduct its business as usual and lease or sell the subject undelivered  
2 aircraft due to Boeing's fraud.

3 316. Pursuant to the Purchase Agreement and the Supplemental Agreements,  
4 Timaero notified Boeing on February 28, 2019 that it planned to sell two 737 MAX aircraft  
5 scheduled to be delivered in May 2019 and July 2019 to AFG Aviation, who would lease  
6 the aircraft to NordStar Airlines. Boeing began customizing the aircraft specifically to  
7 NordStar's requirements and specifications. However, three days after the Ethiopian  
8 Airlines crash on March 13, 2019, Timaero notified Boeing that "[u]nder the circumstances,  
9 Nordstar has put the entire discussion on hold." Timaero also notified Boeing that "[a]ll our  
10 other potential clients have put their discussions with us on hold as well pending further  
11 developments." Timaero has been unable to sell or lease any 737 MAX aircraft since the  
12 two catastrophes.  
13

14 317. As a result, Timaero has lost substantial business and revenues, and the 737  
15 MAX's reputation is permanently tarnished, and thus its value diminished due to Boeing's  
16 actions.  
17

18 318. Further, Boeing has refused to refund Timaero its advanced payments  
19 specified above that were made in reliance on the truth of Boeing's representations and  
20 omissions, and in accordance with the terms of the Purchase Agreement.  
21

22 319. Boeing's affirmative misrepresentations and material omissions as set forth  
23 herein comprise fraud. These misrepresentations and omissions were significant and  
24 material and were intended to and did mislead Timaero. Timaero acted in reliance upon  
25 Boeing's misrepresentations and omissions and has suffered damages thereby. Timaero  
26

1 claims all damages to which it is entitled under applicable law and in an amount to be  
2 determined at trial.

### 3 **Count II – Negligent Misrepresentation**

4 320. Timaero realleges the allegations of all prior paragraphs as if each is fully  
5 set forth herein.  
6

7 321. Boeing is the manufacturer, designer, distributor, seller and/or supplier of  
8 the 737 MAX model aircraft. Under the directive of senior management, Boeing and/or  
9 employees working in the scope of their employment made knowingly false statements  
10 and/or omissions about material facts to Timaero to influence Timaero's decision to  
11 purchase the 737 MAX, execute the Purchase Agreement, execute the Supplemental  
12 Agreements (each of which provided that "[t]he Purchase Agreement is amended as set  
13 forth above, and all other terms and conditions of the Purchase Agreement remain  
14 unchanged and are in full force and effect,"), and to accept delivery of two 737 MAX  
15 aircraft.  
16

17 322. Boeing knew by at least 2012 that it could not build an aircraft under a 737  
18 amended type certificate requiring only Level B differences training because of the  
19 aerodynamic problems created by placing larger, more fuel-efficient engines on the existing  
20 737 NG frame. Boeing chose not to make the necessary structural changes to the aircraft's  
21 frame because that would affect the aircraft's ability to be certified under an amended type  
22 certification. Instead, Boeing utilized a flight control system (MCAS) to stabilize the aircraft  
23 and hid MCAS's full functionality from the FAA and Timaero because Boeing knew MCAS  
24 would jeopardize Level B non-simulator training. Boeing's plan enabled it to obtain FAA  
25 certification with Level B non-simulator training, and to market the 737 MAX as only  
26

1 needing computer-based training for 737 NG pilots. However, Boeing knew those  
2 statements were false. Further, the FAA repeatedly communicated to Boeing that adding  
3 MCAS (among other features) would result in additional simulator training.

4 323. As detailed above, however, as part of Boeing's authorized sales  
5 communications to induce customers to buy 737 MAX aircraft, Boeing represented to  
6 Timaero in multiple meetings, marketing materials, business proposals, press releases, and  
7 publicly that the 737 MAX would not require additional simulator training for pilots already  
8 certified to fly its predecessor 737 NG (Level B non-simulator pilot training requirements),  
9 and would be airworthy, safe, free from design defects, and in compliance with appropriate  
10 aviation regulations. Boeing and Timaero expressly contracted in the Purchase Agreement  
11 that no additional simulator training would be required for 737 NG pilots.  
12

13 324. Boeing's representations were false, misleading, and/or in reckless or  
14 negligent disregard of the truth. Boeing also concealed all or parts of the truth of material  
15 facts, including the 737 MAX's aerodynamic instability and the MCAS flight control  
16 system, when it had a legal duty to speak, and when it had already made representations to  
17 Timaero and the FAA.  
18

19 325. If Timaero had known about the aerodynamic instability during  
20 development and testing, MCAS, the design changes of the 737 MAX that required the  
21 use of MCAS, and the risks that these modifications posed, Timaero would not have  
22 purchased MAX aircraft from Boeing, would not have entered into the Supplemental  
23 Agreements, and would not have accepted delivery of its Aircraft. But, in conjunction  
24 with the execution of the Purchase Agreement and each of the Supplemental Agreements,  
25 Timaero relied on Boeing's assurances that the 737 MAX was an improved version of the  
26

1 737 that would not require additional training or depart significantly from the operation  
2 and flight characteristics of the 737 NG or previous generations of the 737, and that the  
3 737 MAX would continue to have the best safety record of any aircraft.

4 326. As a result of Boeing's inducement of Timaero to buy MAX aircraft  
5 through the Purchase Agreement and each of the Supplemental Agreements, and Boeing's  
6 other wrongful conduct, the 737 MAX aircraft that Timaero agreed to purchase have lost  
7 substantial value, if not all of their value, and/or are commercially damaged beyond repair  
8 according to the terms of the Purchase Agreement. Timaero has thus incurred significant  
9 damages in the form of diminution of value, as well as additional damages in the form of  
10 additional expense, costs of temporary cover, and other items.

11 327. Even when or if Boeing is able to completely fix the aircraft so that they  
12 can fly, Timaero's ability to use the aircraft will be substantially diminished due to  
13 continuing and legitimate safety fears concerning the 737 MAX resulting from Boeing's  
14 misconduct.

15 328. Boeing did not disclose any of the 737 MAX design and development  
16 problems to purchasers, including Timaero, because it did not want to jeopardize sales,  
17 including Boeing's sale of the aircraft to Timaero.

18 329. Boeing knew that the 737 MAX had materially different flight  
19 characteristics from the 737 NG, requiring Boeing to include MCAS in the 737 MAX.

20 330. Boeing did not disclose MCAS or the reasons why it was necessary in the  
21 737 MAX to Timaero. Boeing had a duty to disclose MCAS to customers, including  
22 Timaero, the FAA, and pilots. Failure to disclose MCAS and train pilots on MCAS  
23 resulted in two fatal crashes.  
24  
25  
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1           331. Boeing did not disclose to Timaero that MCAS could engage in a way that  
2 would cause the 737 MAX to enter into a dive based on a fault or malfunction in only one  
3 of the aircraft's two AOA sensors.

4           332. As detailed above, Boeing continued to make the same knowingly false  
5 representations and omissions to Timaero before, during, and after signing the Purchase  
6 Agreement and before, during and after execution of each of the Supplemental Agreements.

7           333. Also as detailed above, when Boeing promised before, during, and after  
8 execution of the Purchase Agreement and the Supplemental Agreements that the 737 MAX  
9 would not require simulator training, Boeing knew its misrepresentations were false and  
10 had no intention of fulfilling its promise.

11           334. As a result of management's coordinated directives to sell the aircraft with  
12 false representations about training, Boeing set out to obtain an unwarranted certification  
13 matching that falsehood. After testing and test flights identified major flight problems, and  
14 after Boeing incompletely and disingenuously disclosed its initial MCAS design to the  
15 FAA, Boeing totally redesigned MCAS to address long-known flight stability problems.  
16 Boeing expanded and materially changed MCAS's functional abilities. Boeing knew it  
17 could not disclose its MCAS changes to the FAA because it would put its goal of no  
18 additional simulator training at even greater risk. As a result, Boeing purposely  
19 misrepresented the functional abilities of MCAS to the FAA, mischaracterized MCAS's  
20 failure condition, and omitted the MCAS redesign from the FAA. In the limited amount of  
21 information related to MCAS Boeing did disclose to the FAA, Boeing purposely  
22 mischaracterized the system and purposely gave only small amounts of information to  
23  
24  
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1 different disconnected FAA employees so that the FAA could not piece the information  
2 together.

3 335. Further, Boeing knew there was a serious risk of the 737 MAX crashing and  
4 knew that MCAS was dangerous. Boeing's documents show it concealed the 737 MAX's  
5 software problems from the FAA, and a skilled Boeing test pilot reported on May 5, 2015  
6 crashing the 737 MAX multiple times in the simulator. Boeing knew that its test pilots'  
7 crashed simulator results put the entire program at risk from being approved, and therefore,  
8 purposely omitted those results from the FAA and Timaro. Boeing concealed the fact that  
9 the 737 MAX was likely to crash from Timaro, who was left to learn the risks itself.  
10

11 336. Boeing made these representations and omissions knowing that Timaro was  
12 relying on their truth. It made them deliberately for its own economic advantage.  
13

14 337. Boeing had a legal duty to correct its misrepresentations once made to the  
15 FAA and Timaro, and disclose its omissions to the FAA and Timaro, but failed to do so.  
16 Timaro relied on Boeing's misrepresentations and omissions as true at least because of  
17 Boeing's superior knowledge concerning the 737 MAX. Timaro has to rely on Boeing  
18 properly obtaining FAA certification because Timaro has no way to check Boeing's  
19 compliance with FAA requirements. Boeing purposely misled the FAA and Timaro and  
20 purposely omitted material information from the FAA to obtain certification, and from  
21 Timaro, as detailed above. Boeing's representations of airworthiness and only computer-  
22 based training for certified 737 NG pilots, combined with the circumstances of a long-term  
23 contractual relationship during certification, involving the initial Purchase Agreement and  
24 seven Supplemental Agreements, that involved Boeing delivering the aircraft and  
25 Timaro's pre-delivery payments, imposed on Boeing a duty to tell Timaro of problems  
26

1 that undermined or contravened its representations, including a duty to disclose that Boeing  
 2 was not conducting the FAA certification process properly and that it was defrauding the  
 3 FAA.

4  
 5 338. Timaero was further aware of and relied on Boeing's representations to the  
 6 FAA because Boeing received an FAA certification as required by the Purchase Agreement  
 7 and Boeing communicated certification and satisfaction of the Purchase Agreement to  
 8 Timaero. Boeing's representations to the FAA are inherently incorporated in Boeing's  
 9 representations to Timaero that it obtained FAA certification and Boeing's delivery of  
 10 aircraft that Boeing represents is validly certified.

11  
 12 339. Timaero was entitled to rely, and did rely, on Boeing's misrepresentations  
 13 and omissions, as specified herein. Timaero would not have performed the following actions  
 14 had it known the truth at the respective dates about Boeing's misrepresentations or that  
 15 Boeing was concealing objectively material information relating to the 737 MAX from the  
 16 FAA and Timaero:

- 17 1. entered into the Purchase Agreement on January 10, 2014 to purchase
- 18 twenty (20) 737 MAX aircraft and paid a 1% deposit of the contract price
- 19 of approximately \$20 million;
- 20 2. entered into the VEB-AGTA on January 10, 2014;
- 21 3. paid Boeing pre-delivery payments of \$189,224,800, which included
- 22 paying 4% of each aircraft's sale price at 24 months prior to delivery, and
- 23 5% of each aircraft's sale price at 21 months, 18 months, 15 months, and
- 24 12 months prior to delivery;
- 25 4. entered into Supplemental Agreement No. 1 on September 15, 2016, which
- 26 converted two (2) Boeing 737-800 aircraft from a prior purchase agreement
- into two (2) Boeing 737 MAX aircraft, and which provided that "[t]he
- Purchase Agreement is amended as set forth above, and all other terms and
- conditions of the Purchase Agreement remain unchanged and are in full
- force and effect.";
5. entered into Supplemental Agreement No. 2 on August 28, 2017, which
- provided that "[t]he Purchase Agreement is amended as set forth above, and

all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;

6. entered into Supplemental Agreement No. 3 on November 12, 2017, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
7. entered into Supplemental Agreement No. 4 on February 26, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
8. entered into Supplemental Agreement No. 5 on September 21, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
9. entered into Supplemental Agreement No. 6 on September 28, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
10. entered into Supplemental Agreement No. 7 on November 29, 2018, which provided that “[t]he Purchase Agreement is amended as set forth above, and all other terms and conditions of the Purchase Agreement remain unchanged and are in full force and effect.”;
11. paid for and accepted delivery of two (2) 737-MAX aircraft in December 2018; and
12. unwittingly omitted material facts to Timaero’s customers and potential customers to sell and lease 737 MAX aircraft.

340. Boeing’s misrepresentations and omissions were the proximate cause and cause in fact of Timaero’s damages.

341. Notably, as stated in the DPA, Boeing conspired to defraud the FAA AEG “[f]rom at least in and around November 2016 through at least in and around December 2018.” DPA-A ¶ 16. Accordingly, despite the fact that Boeing knew of material defects in the 737 MAX long before, even Boeing’s admitted fraud occurred coexistent in time with the execution of the Supplemental Agreements and delivery of two 737 MAX aircraft to Timaero.

342. Further, with respect to Supplemental Agreement No. 1 entered into on September 15, 2016, which converted two Boeing 737-800 aircraft from a prior purchase agreement into two Boeing 737 MAX aircraft, Boeing secretly expanded MCAS's use as explained herein 6-months prior to execution of Supplemental Agreement No. 1, on March 30, 2016, pursuant to Revision D. For the reasons stated herein, Boeing knew that the expansion of MCAS's operation on March 30, 2016 and the version of MCAS released on August 15, 2016 precluded Level B non-simulator training in all 22 of the 737 MAX aircraft that were to be delivered to Timaro. Boeing thus knew at least as early as March 30, 2016 and without question by August 15, 2016, that it could not deliver aircraft to Timaro that only required Level B non-simulator training. Nevertheless, Boeing represented as of September 15, 2016 in Supplemental Agreement No. 1 that "all other terms and conditions of the [2014] Purchase Agreement," including the promise of delivering 20 aircraft that require only Level B non-simulator training "remain unchanged and [] in full force and effect." Boeing knew that its representation was not true and that its promise to deliver 20 aircraft from the 2014 Purchase Agreement and the two aircraft from Supplemental Agreement No. 1 with only Level B non-simulator training would not be fulfilled. Boeing never intended that its promises would be fulfilled. Timaro relied on Boeing's misrepresentation that "all [] terms and conditions of the [2014] Purchase Agreement remain unchanged and are in full force and effect" in executing Supplemental Agreement No. 1. Timaro would not have entered into Supplemental Agreement No. 1, or any of the Supplemental Agreements, had Boeing disclosed that it secretly expanded MCAS's use at least as early as March 2016.

1           343. Further, upon information and belief, the information that led to the decision  
2 to design and implement Revision D was known to Boeing prior to Timaero's execution of  
3 the Purchase Agreement in January 2014. Thus, upon information and belief, Boeing knew  
4 that an expansion of MCAS was required prior to Timaero's execution of the Purchase  
5 Agreement. Boeing thus knew prior to January 10, 2014 that it could not deliver aircraft to  
6 Timaero that only required Level B non-simulator training. Nevertheless, Boeing  
7 represented and promised in the Purchase Agreement that it would deliver 20 aircraft that  
8 require only Level B non-simulator training. Boeing knew that its representations and  
9 promises were not true and that its promise to deliver 20 aircraft with only Level B non-  
10 simulator training would not be fulfilled. Boeing never intended that its promises would be  
11 fulfilled. Timaero relied on Boeing's misrepresentation in executing the Purchase  
12 Agreement. Timaero would not have entered into any of the Supplemental Agreements had  
13 Boeing disclosed its knowledge that MCAS's use would need to be expanded.  
14

15           344. At the time of this Third Amended Complaint, Boeing was contractually  
16 obligated in accordance with the Purchase Agreement to deliver five (5) Boeing Model 737-  
17 8 Aircraft to Timaero. Boeing, however, has only delivered two (2) 737-8 Aircraft, which,  
18 unknown to Timaero at the time, did not conform to the aircraft's type certificate.  
19

20           345. Boeing's acts and conduct as averred herein have cause substantial,  
21 irrecoverable and irreparable consequential damages to Timaero's business reputation and  
22 goodwill, and have caused the resulting loss in the value of Timaero's business which is  
23 continuing and has constituted an ongoing concern for Timaero. At the time the Purchase  
24 Agreement and each of the Supplemental Agreements were executed, Boeing knew or  
25 should have known that Timaero would sell or enter into leasing contracts with third parties  
26

1 for the subject aircraft. For example, in Letter Agreement VEB-PA04022-LA-1301891 to  
2 the Purchase Agreement, Boeing acknowledged that “[i]t is understood that Customer  
3 [Timaero] intends to lease the 737 MAX to a third party or parties...and that such Lessees  
4 will be in the commercial airline business as an operator of aircraft.” Timaero, however, has  
5 not been able to conduct its business as usual and lease or sell the subject undelivered  
6 aircraft due to Boeing’s fraud.  
7

8 346. Pursuant to the Purchase Agreement and the Supplemental Agreements,  
9 Timaero notified Boeing on February 28, 2019 that it planned to sell two 737 MAX aircraft  
10 scheduled to be delivered in May 2019 and July 2019 to AFG Aviation, who would lease  
11 the aircraft to NordStar Airlines. Boeing began customizing the aircraft specifically to  
12 NordStar’s requirements and specifications. However, three days after the Ethiopian  
13 Airlines crash on March 13, 2019, Timaero notified Boeing that “[u]nder the circumstances,  
14 Nordstar has put the entire discussion on hold.” Timaero also notified Boeing that “[a]ll our  
15 other potential clients have put their discussions with us on hold as well pending further  
16 developments.” Timaero has been unable to sell or lease any 737 MAX aircraft since the  
17 two catastrophes.  
18

19 347. As a result, Timaero has lost substantial business and revenues, and the 737  
20 MAX’s reputation is permanently tarnished, and thus its value diminished due to Boeing’s  
21 actions.  
22

23 348. Further, Boeing has refused to refund Timaero its advanced payments  
24 specified above that were made in reliance on the truth of Boeing’s representations and  
25 omissions, and in accordance with the terms of the Purchase Agreement.  
26

349. Boeing's affirmative misrepresentations and material omissions as set forth herein comprise fraud. These misrepresentations and omissions were significant and material and were intended to and did mislead Timaero. Timaero acted in reliance upon Boeing's misrepresentations and omissions and has suffered damages thereby. Timaero claims all damages to which it is entitled under applicable law and in an amount to be determined at trial.

#### Count IV – Breach of Contract

350. Timaero realleges the allegations of all prior paragraphs as if each is fully set forth herein.

351. Boeing and Timaero are parties to Purchase Agreement Number PA-04022 relating to Boeing Models 737-8 Aircraft and Aircraft General Terms Agreement dated January 10, 2014, which was identified as VEB-AGTA ("AGTA"), which incorporate letter agreements, tables, exhibits, and the Supplemental Agreements.

352. Boeing breached the Purchase Agreement, the AGTA, and the Supplemental Agreements, including by (a) failing to comply with regulatory requirements and certificates, and (b) by delaying the scheduled delivery of aircraft, including due to Boeing's fault or negligence.

353. Article 3 of the AGTA pertains to Regulatory Requirements and Certificates that must be obtained by Boeing and specifically provides in Section 3.1 as follows:

3.1 Certificates. Boeing will manufacture each aircraft to conform to the appropriate Type Certificate issued by the United States Federal Aviation Administration (FAA) for the specific model of aircraft and will obtain from the FAA and furnish to Customer at delivery of each aircraft either a Standard Airworthiness Certificate or an Export Certificate of

1           Airworthiness issued pursuant to Part 21 of the Federal Aviation  
2           Regulations.

3           354. Boeing breached the terms of the AGTA by providing false, misleading,  
4           and/or negligent misrepresentations or omitting material information to the FAA and other  
5           aviation authorities and by not designing and manufacturing the 737 MAX in accordance  
6           with FAA regulations, and all other pertinent United States federal aviation regulations,  
7           pertaining to type certificates that must be obtained for the design and manufacture of new  
8           model aircraft.

9           355. Article 7 of the AGTA titled “Excusable Delay” specifically provides in  
10          Section 7.1 as follows:

11                   7.1 General. Boeing will not be liable for any delay in the scheduled  
12                   delivery month of an aircraft or other performance under a purchase  
13                   agreement caused by (i) acts of God; (ii) war or armed hostilities; (iii)  
14                   government acts or priorities; (iv) fires, floods, or earthquakes; (v) strikes  
15                   or labor troubles causing cessation, slowdown, or interruption of work; (vi)  
16                   inability, after due and timely diligence, to procure materials, systems,  
17                   accessories, equipment or parts; or (vii) any other cause to the extent such  
18                   cause is beyond Boeing’s control and not occasioned by Boeing’s fault or  
19                   negligence. A delay resulting from any such cause is defined as an  
20                   Excusable Delay.

21           356. As set forth in Section 7.1, all of the causes considered Excusable Delay are  
22           those that are “beyond Boeing’s control and not occasioned by Boeing’s fault or  
23           negligence.”

24           357. Boeing’s delay in the delivery of aircraft to Timaero in breach of the aircraft  
25           delivery schedule agreed to by the parties is the result of Boeing’s fault and negligence in  
26           designing the aircraft with a defective flight control system that it did not properly test and  
          analyze, and for which it provided incorrect and incomplete analysis to the FAA as part of  
          its certification.



1           358. At the time of Timaero's first Motion to Amend the Complaint, Boeing was  
2 contractually obligated in accordance with the Purchase Agreement to deliver five (5)  
3 Boeing Model 737-8 Aircraft to Timaero. Boeing, however, has only delivered two (2) 737-  
4 8 Aircraft. Boeing's delay is non-excusable, which further entitles Timaero to liquidated  
5 damages under the Purchase Agreement.  
6

7           359. Even if Boeing's delay were somehow excusable under the AGTA, Boeing  
8 breached the AGTA by (a) failing to provide notice of a delivery delay exceeding twelve  
9 months, pursuant to Section 7.2, at any time within twelve months of the scheduled delivery  
10 date for aircraft due to be delivered in May 2019, July 2019, and January 2020; and (b) upon  
11 providing notice of a delivery delay exceeding twelve months for these aircraft on February  
12 15, 2021, refusing to return at least \$51,330,000 in advanced payments for these aircraft  
13 pursuant to Section 7.6 upon Timaero's notice of termination sent on March 4, 2021  
14 pursuant to Section 7.4.  
15

16           360. On February 15, 2021, Boeing issued a revised delivery date under Section  
17 7.4 for Timaero's aircraft scheduled to be delivered in May 2019, July 2019, and January  
18 2020. The revised delivery date for these aircraft extended more than twelve (12) months  
19 beyond the original delivery dates. As a result, and notwithstanding any of the relief  
20 requested herein by Timaero to rescind, cancel, or set aside the Purchase Agreement, on  
21 March 4, 2021, Timaero terminated the aircraft scheduled to be delivered in May 2019, July  
22 2019, and January 2020 pursuant to Section 7.4 of the AGTA and based on Boeing's  
23 assertions that the Purchase Agreement is enforceable. Pursuant to Section 7.6 of the  
24 AGTA, Boeing must immediately return the \$51,330,000 in advance payments for these  
25 aircraft. However, Boeing has refused to return Timaero's advance payments. In fact, over  
26

1 one month after Timaero's March 4 termination, on April 19, Boeing terminated the exact  
2 aircraft that were already terminated by Timaero. Per Boeing, the advanced payments are  
3 being "retained by Boeing to offset against damages caused by Customer's repudiation of  
4 the Purchase Agreement." This is not permissible under Washington law, which provides  
5 that, even if Boeing "justifiably" withholds delivery of aircraft because of Timaero's alleged  
6 breach, Timaero is entitled to restitution of any payment amount that exceeds \$500 (i.e.,  
7 \$51,329,500) unless the parties' agreement provides for a greater value. RCW 62A.2-  
8 718(2). The Purchase Agreement has no such provision.

10 361. Accordingly, Boeing's actions of (1) issuing a revised delivery date for the  
11 aircraft scheduled to be delivered in May 2019, July 2019, and January 2020, and (2)  
12 terminating the May 2019, July 2019, and January 2020 aircraft, which demonstrates  
13 Boeing's agreement that (a) Timaero properly and timely terminated the aircraft scheduled  
14 to be delivered in May 2019, July 2019, and January 2020 under the AGTA, (b) Boeing  
15 immediately owes Timaero \$51,330,000 in advance payments, or at least immediate  
16 payment of \$51,329,500 in advance payments, for such aircraft, and (c) Boeing discharges  
17 Timaero from "all obligations and liabilities" with respect to such aircraft."

19 362. Furthermore, contracts contain an implied covenant of good faith and fair  
20 dealing under Washington law. Where one party to the contract deliberately contravenes  
21 the intention and spirit of the contract, that party is liable for breach of the implied covenant  
22 of good faith and fair dealing.

24 363. Boeing's actions and/or omissions as set forth herein are in breach of the  
25 Purchase Agreement's express provisions and also its implied covenant of good faith and  
26 fair dealing. Boeing's acts and/or omissions, including, but not limited to, the airworthiness

1 of the 737 MAX aircraft, the functional capacity of MCAS and the issues associated with  
2 MCAS, simulator training, and Boeing's test simulator results, including that Boeing's own  
3 test pilots were crashing the aircraft and that MCAS was running rampant, were contrary to  
4 the standards of good faith and fair dealing, and were made in such a manner as to evade  
5 the spirit of the Purchase Agreement, and/or so as to deny Timaero the expected benefits of  
6 the transaction.

7  
8 364. Boeing's acts and conduct as averred herein have foreseeably caused  
9 substantial, irrecoverable and irreparable consequential damages to Timaero's business  
10 reputation and goodwill, and have caused the resulting loss in the value of Timaero's  
11 business which is continuing and has constituted an ongoing concern for Timaero. At the  
12 time the Purchase Agreement was executed, Boeing knew or should have known that  
13 Timaero would sell or enter into leasing contracts with third parties for the subject aircraft.  
14 For example, in Letter Agreement VEB-PA04022-LA-1301891 to the Purchase Agreement,  
15 Boeing acknowledged that "[i]t is understood that Customer [Timaero] intends to lease the  
16 Aircraft to a third party or parties...and that such Lessees will be in the commercial airline  
17 business as an operator of aircraft." Timaero, however, has not been able to conduct its  
18 business as usual and lease or sell the subject undelivered aircraft due to Boeing's breach.  
19 As a result, Timaero has lost substantial business and revenues.

20  
21  
22 365. Pursuant to the Purchase Agreement, Timaero notified Boeing on February  
23 28, 2019 that it planned to sell two 737 MAX aircraft scheduled to be delivered in May  
24 2019 and July 2019 to AFG Aviation, who would lease the aircraft to NordStar Airlines.  
25 Boeing began customizing the aircraft specifically to NordStar's requirements and  
26 specifications. However, three days after the Ethiopian Airlines crash on March 13, 2019,

1 Timaero notified Boeing that “[u]nder the circumstances, Nordstar has put the entire  
 2 discussion on hold.” Timaero also notified Boeing that “[a]ll our other potential clients have  
 3 put their discussions with us on hold as well pending further developments.” Timaero has  
 4 been unable to sell or lease any 737 MAX aircraft since the two catastrophes.

5  
 6 366. As a result, Timaero has lost substantial business and revenues, and the 737  
 7 MAX’s reputation is permanently tarnished, and thus its value diminished due to Boeing’s  
 8 actions.

9 367. Further, Timaero has not been able to recover its advanced payments to  
 10 Boeing for the subject aircraft that were made in accordance with the terms of the Purchase  
 11 Agreement.

12 368. The agreement between Timaero and Boeing included Boeing’s Aircraft  
 13 General Transfer Agreement (AGTA), the Customer Support supplement, Letter  
 14 Agreement 1301894 dated January 10, 2014, and Letter Agreement 1301883 dated  
 15 January 10, 2014.

16 369. [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED] There  
 24 is no clause or term of the agreement between Timaero and Boeing that authorizes Boeing  
 25 to retain any portion of the advance payments to be returned.  
 26

1           370. Boeing terminated aircraft 60455, 60444, 60450 by Boeing's letter of April  
2 19, 2021. Boeing did not return the advance payments for those aircraft.

3           371. Since Boeing delayed return of the advance payments for the terminated  
4 aircraft [REDACTED] the money became a debt on which interest should accrue at  
5 the Washington statutory rate. As of May 19, 2021, when the return of advance payments  
6 on the first three terminated aircraft was due, interest began to accrue on the \$168,059,847  
7 of advance payments that Boeing should have returned to Timaero for those aircraft  
8 according to Boeing's own ledger (BOETIM000502-BOETIM000528).

9           372. Letter Agreement 1301883 dated January 10, 2014 provides for liquidated  
10 damages and return of advance payments for non-excusable delay. [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15           373. By a letter dated May 7, 2024, Timaero terminated Boeing aircraft 60442,  
16 60443, 60445, 60446, 60447, 60448, 60449, 60451, 60452, 60453, 60454, 60456, 60457,  
17 64180, 64181, 60440 and 60441 for non-excusable delay [REDACTED]

18 According to Letter Agreement 1301883, Boeing must return advance payments made for  
19 the terminated aircraft, in the amount of \$16,140,880. Additionally, Boeing must pay  
20 [REDACTED] in liquidated damages.

21 [REDACTED]  
22           374. Since Boeing has delayed the return of advance payments and the payment  
23 of liquidated damages more than 30 days, those funds became a debt on which interest  
24 should accrue at the Washington statutory rate. As of June 11, 2024, when those funds  
25 were due to Timaero, interest began to accrue on the amount of \$47,046,880.  
26

375. Timaero has suffered damages as a result of Boeing's breach and claims all damages to which it is entitled under applicable law and in an amount to be determined at trial.

## VI. PRAYER FOR RELIEF

WHEREFORE, Timaero prays the entry of a money judgment against Boeing in excess of the jurisdictional limit in an amount as a jury deems reasonable and just, together with costs, attorneys' fees, and such other damages as may be allowed under applicable law. Timaero further demands a trial by jury of all issues triable as of right by a jury.

Timaero requests the following relief:

- A. an order directing the rescission of the Purchase Agreement Number PA-04022;
- B. an order directing Purchase Agreement Number PA-04022 between Boeing and Timaero be cancelled and set aside;
- C. an award for damages to compensate Timaero for all damages proximately caused by Boeing's wrongful acts and omissions as alleged herein in an amount of at least \$277,288,870.39, which includes but is not limited to pre-delivery payments being held by Boeing, liquidated damages and loan interest accrued by Timaero;
- D. an award for damages to compensate Timaero for its lost profits caused by Boeing's wrongful acts and omissions as alleged herein in an amount to be determined at trial;
- E. an award of punitive damages for Boeing's fraudulent acts in an amount at least three times the amount of compensatory damages;
- F. recovery of Timaero's costs incurred in bringing this action, including attorneys' fees, to the extent authorized by law;
- G. any other damages recoverable under applicable law; and
- H. such other relief as the Court deems just and equitable under applicable law.

DATED this 9 day of August, 2024.

WHITMYER IP GROUP LLC

By: s/Alan Harrison

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